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THE ORIGIN AND HISTORY

OF THE

CONSTITUTION OF ENGLAND,

&c. &c.

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THE

ORIGIN AND HISTORY

OF THE

CONSTITUTION OF ENGLAND,

AND OF THE

EARLY PARLIAMENTS

OF

IRELAND.

BY SIR WILLIAM BETHAM,

ULSTER KING OF ARMS, &c.

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ADVERTISEMENT.

It having been suggested that the title by which this volume was first published, very inadequately expressed its real character: it has been thought expedient to republish it with one more fully declaring its contents and objects, which were intended to show the origin and gradual progress of the parliaments or legislative assemblies of England, until the period when they acquired the form and consistency which existed until the passing of the Reform Bill, and of the parliaments of Ireland to the reign of Henry the Seventh.

A second volume containing the sequel of the history of the parliaments, and other matters connected with the history of Ireland, was intended to have followed, but finding the materials to apply more properly to a general history of Ireland, than to its parliaments exclusively, they have been reserved for such a work. Some necessary additions have been made to this volume, illustrative of the causes which led to the enactment of Poyning's law, and other matters connected with the history of that very interesting and extraordinary period, so as to render the present work complete in itself.

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ORIGIN AND HISTORY

OF THE

CONSTITUTION OF ENGLAND.

CHAPTER I.

GENERAL OBSERVATIONS.

On common topics men argue rationally and logically, and proceed to their investigation according to rule; but their free and glorious constitution was, formerly, to Englishmen so much an object of veneration, and almost idolatry, that they could not be satisfied in seeking its origin amongst sources similar to those from which have sprung the institutions of other nations, but searched for it in the clouds and mists of antiquity, and in the camps of their barbarous northern ancestors, and, indeed, any where but in its true locality, and, therefore, have been led into a labyrinth of contradictions and anomalies.

Writers on the history and constitution of England have fondly clung to the idea that from, and even before, the Norman conquest, there existed something like a popular, constitutional, and free government, and a representation of the people, which they imagined to have

exercised the functions of legislation during the period of Saxon jurisdiction, continued, but in a modified and altered shape, in the reigns of the first eight kings of the Norman race. Even the Lords' Committees were not free from the influence of this national, this patriotic infirmity, for they repeatedly admit, they can discover no evidence of a popular constitutional legislation, yet speak of the *constituent parts of the legislative assemblies* of those times.

The natural and logical method which suggests itself, is to adopt the plan one would follow in investigating the constitution of a corporation; and the first question is, "*What liberties and rights are granted by the charter?*" Unless the enjoyment and use of liberties, not contained therein, were manifest by the practice of the corporation, the charter would be presumed to include the whole; but if it were evident that such liberties were used and enjoyed *from a given period*, then a *subsequent grant* might be fairly presumed, the record whereof had been lost; but no legal or logical mind would presume the existence of liberties and franchises, which appear neither in the charter, or by the usage of the corporation.

It is no easy task to examine a subject like this, without touching on other matters, differing indeed, but at the same time so closely connected with, and related to it, by custom, times, and circumstances, that it is next to impossible to understand one, without a correct knowledge of the other, so dovetailed and interwoven are they together, arising out of, and dependant on each other.

The laborious and voluminous reports of the Lords' Committees contain a great mass of information, but it may be said to be of materials only, mixed up, indeed, with reflections and arguments, but in such a form, that minds endowed with vigorous and strong powers of arrangement, alone are able to digest them, after repeated readings and the most painful investigation. Their lordships draw conclusions, but declare them to be unsatisfactory, and that they have not been able to dissipate the mists of uncertainty, in which the origin of the dignity of a peer of the realm is enveloped.

When those noble, able, and acute lawyers, statesmen, and scholars, are dissatisfied with the result of their labours, it is little less than presumption, in so humble an individual, to undertake the task, but in the hope of rendering some service, I have been induced to persevere.

Early in the investigation, I found that many individuals were denominated *barons*, who never could have obtained that title by *sitting in parliament*, and *earls palatine*, who did not bear, as titles, the names of the counties of which they were earls; these titles could have no necessary connection with sitting in parliament, and, therefore, *earls* and *barons* were not, as such, *peers* or *lords of parliament*. This led to a conclusion, that the ancient assemblies of barons were different in their constitution and objects, to those we now call parliaments, and opened an extensive field for investigation.

The Lords' Committees in the following extract, have suggested a reason why the history of the Parliaments of

England has so long been a matter of difficulty and obscurity :—

" One thing has been sufficiently shown by these re-
" ports, namely, the *danger of going far back* into anti-
" quity, to establish rights to the dignity of peer of the
" realm, *not sanctioned by continued usage of later years;*
" and of applying the principles *established by modern reso-*
" *lutions and decisions to what has passed in earlier times.*"*

This idea, however, is not altogether new. Mr. Reeves in the preface to his "*History of the English Law,*" says, " I found that modern writers, in discoursing of the an-
" cient law, were too apt to speak in modern terms, and
" generally with a reference to some modern usage.—
" Hence it followed, that what they adduced was too often
" distorted and misrepresented, with a view of displaying
" and accounting for, certain coincidences in law at dif-
" ferent periods. As this had a tendency to produce very
" great mistakes, it appeared to me, that in order to have
" a right conception of our old jurisprudence, it would be
" necessary to forget for a while, every alteration which
" had been made since, to enter upon it with a mind wholly
" unprejudiced, and to peruse it with the same attention
" that is bestowed on a system of modern law." With all our care, and fortified with a determination to be governed by those principles, we are very apt to fall into errors in a discussion of this nature, and unconsciously cling to prejudices, even after we are convinced of their being erroneous.

* Third Report of the Lords' Committee, p. 236.

The difficulty of rightly understanding the real character of English titles of dignity has thus, in a great measure, arisen from confounding persons possessed of feudal seignories in ancient times, whether called *earldoms, honours,* or *baronies,* with *peers,* or *lords of parliament,* which although distinct, and altogether different in their nature and origin, yet time and disuse having gradually obliterated all precise recollection of their functions, peers, or lords of parliament, have been confounded with the ancient earls and barons, merely because they bore the *same names.*

The feudal system obtained almost over all Europe, with certain local peculiarities; for it accommodated itself to those customs and laws which existed in the countries where it was introduced, and its *principle* was to vest in the chief of a district, whether called an earl, baron, or lord, judicial authority, and cognizance of the pleas peculiar to the country. Thus the Saxon laws, pleas, and customs, found in England at the conquest, were after that event administered in the feudal courts of the Norman barons, although very dissimilar to those of Normandy. Earls (or counts) and barons, existed in countries where legislative assemblies were unknown. In most parts of Europe, individuals were invested by the sovereigns with extensive territories who, in these seignories, possessed jurisdiction and power, and they had their courts and judges, where they administered justice and law, rendering homage, fealty, and military service, to the sovereign. In the Gallic possessions of the English kings there were earls and barons, who owed them service, while the kings themselves were vassals of,

and did homage to, the sovereigns of France as their liege lord.

Cruise commences his able and useful work on Dignities with the common errors, and thus the evidence he produces annuls his conclusions. He says,

"The dignities, or titles of honour which *exist in Eng-*
"*land,* derive their origin from the feudal institutions, and
"were introduced into this country by the Normans."

Having thus laid down as a principle, that the ancient *barons* were possessed of similar functions as a *modern peer of parliament,* he calls the assemblies of those barons *parliaments,* and the laws, enacted in those times by the king, *acts of parliament,* and by thus embarrassing his subject, becomes involved in difficulties from which he attempts to extricate himself by presuming the enactment of imaginary laws, at some period of English history, which he is totally unable to fix upon, or even to guess at, from any indications, or signs of the times, to be found in record or history.

That feudal or territorial seignories, called counties palatines, or earldoms, and baronies, were established in England by the Conqueror, there can be no doubt; but the *names* only of the *existing dignities* are of Norman origin, their *nature* and *origin* are altogether English growth.

In his first chapter Mr. Cruise states that these feudal dignities *were not "mere personal distinctions,* but were
"*annexed to lands,* and were conferred by a grant of those

"lands." "And that the feudal sovereigns claimed and "exercised the right of erecting a particular tract of land "into a *feudum dignitatis*." "That feudal dignities were "*transferable* with the feuds to which they were annexed, "and a *purchaser acquired the dignity with the estate.*"

"That in France in ancient times every person holding "his estate immediately of the king, *with a right of admi-* "*nistering justice** to those who held under him, in *civil* "*and criminal* cases, was entitled to the appellation of "a *baron*," and he quotes the Grand Coustumier de France, lib. 2, c. 2—"*Tout homme qui a haute justice en* "*ressort se peut nommer Baron.*"

Spelman says:—"*Baronem vocant qui merum mistumque* "*imperium habet in aliquo castro, ex concessione principis,* "*vel ut alii loquuntur, summæ mediæ et infimæ jurisdic-* "*tionis: jus in arce, quadam a principe concessum.*"

In the *Grand Coustumier de Normandie*, under the head *De Releviis*, is the following passage:—"*Unde notandum est* "*quod quædam sunt feuda capitalia, quædam supposita;* "*capitalia sunt quæ in capite tenentur, ut comitatus,* "*baroniæ, et feuda loricæ.*"

In the grant to William de Broasa of the *honour* of Limerick by king John, he is directed to hold "*adeo libere* "*ut alii capitales barones nostri in Hibernia tenent.*"

* Cognizance of certain pleas was granted in all the patents of those lands called baronies in England and Ireland, which power or jurisdiction *constituted the barony*, and, as in France, might be considered as its nominating principle.

In page 10, Mr. Cruise calls the councils, directed to be summoned under the 14th chapter of Magna Charta, *parliaments*, and again in § 34, he says, that "the right of *sit-*
" *ting in parliament*, was confined to those who held *entire*
" *baronies*, and that before the reign of Henry III. every
" tenant, in capite, was, *ipso facto*, a *parliamentary baron*,
" and entitled to be summoned either by the king's writ,
" or by the sheriff of his county, *yet about that time some new*
" *law was made, by which it was established, that no person*
" *though possessed of a barony, should come to parliament,*
" *without being expressly summoned by the king's writ.*"

Mr. Cruise is compelled to *presume a law*, in order to account for what his intelligent mind was convinced was true, namely, that no one could attend a *parliament unless summoned*, and yet not even a reference to any such law is to be found.

The ancient councils were not constituted in the same manner, or invested with the same powers in modern parliaments, therefore, what was strictly legal in respect to the communia concilia, was totally changed on the institution of parliaments. The communia concilia regni, consisted only of the king's tenants in chief, *as of the crown.*

Lord Coke says on Magna Charta:—"It is to be under-
" stood, that if the king give land to one, and his heirs
" *tenendum de rege per servitium baroniæ*, he is no *lord of*
" *parliament* until he be called by writ to parliament."

Considering parliament as a court of justice, all the

barons by tenure were bound to attend, if summoned, and were liable to amerciament for refusal or neglect.

Mr. Cruise followed the errors of his predecessors, by confounding the *personal* dignity of a peer in parliament, *inherent in the blood* of the possessor, with a title or name *attached to land*, merely *judicial*, having little, if any legislative character; whose owner possessed no power beyond his own bounds, or over his own vassals, except the right, or liability, of attending the king's baronial court to perform the functions afterwards executed by juries, and the right of granting to the king a part of his own or his vassal's property.

On the institution of parliaments, the crown naturally selected individuals possessed of the greatest property and influence in the nation, to be the peers, or lords of parliament; and although many of the barons by tenure were omitted, who had lost their influence and consequence, by disposing of their estates, and some wealthy persons holding by subinfeudation or otherwise, were summoned *as peers*; yet many of the ancient barons still were the most wealthy and powerful, and, therefore, were summoned to the newly-established house of peers, and thus made lords of parliament. Their continuing to bear the title of *barons*, led to the conclusion, that the new dignity of a peer was a continuation of their former one of a feudal baron, and to the confusion which, for ages, has existed on the subject.

To understand, therefore, the true character of the baronies by tenure, it is necessary, as suggested by Mr.

Reeves, to divest ourselves of the ideas which modern parlance has attached to the titles of *earls* and *barons*; and also of the modern meaning of the word *noble*, which, in *England*, is exclusively attached to those families whose heads are dignified with a seat in the upper house of parliament, and are called *peers of the realm*.

In France, and generally on the continent, the possession of a noble fee conferred *nobility*, but *not a peerage*; for nobility, as before stated, has no necessary connection with *sitting in parliament*.

In the language of France, and in *legal language* in England, every man entitled to *bear arms* is noble. The word *gentilhomme*, means a *nobleman*, although he may have *no title*; in fact, what, in England, is called a *gentleman of blood and arms*, in France, and elsewhere on the continent of Europe, is a *nobleman*. Lord Coke says:—
"At this day the surest rule is, '*nobiles sunt qui arma gen-*
"*tilitia antecessorum suorum proferre possunt.*' There-
"fore, they are called *scutiferi, armigeri*, &c. Where a
"knight is degraded, one of his punishments is, *quod cly-*
"*peus suus gentilicius reversus erit*, and here his arms be
"reversed that beareth none." Nobility is not, therefore, confined to the peerage;—a man may be a *peer* of Parliament, and in the language and consideration of the laws of arms and chivalry, *not noble*. Peers may have no *right to bear arms*, and consequently they are ennobled, *in modern parlance* only, by the royal grant of their peerage, not by the laws of chivalry, and although they may have a seat in the house of peers, they may not be *gentilhommes*. That sitting in parliament does not necessarily

ennoble the blood of those who possess the privilege, is proved by the lords spiritual, whose blood is not influenced by the operation, they, and their descendants, continue plebeians if not noble before their introduction to that house, although unquestionably lords of parliament *while bishops.*

Strictly speaking, a *yeoman,* or person *not entitled to bear arms,* is not even capable of receiving knighthood. For, Lord Coke says—"he ought to be a gentleman of "name and blood, *claro loco natus,* or else *non debet.*" The arms of the knights formerly made by the king in England, and by the king's representative in Ireland, were carefully recorded, but of late years there are miserable blanks: many have been elevated to the dignity of *Sir Knight,* who, either had no pretensions to bear arms, or did not condescend to produce their evidences. Again, Lord Coke says:—"And great discord and "discontentment would arise within the realm, if yeo- "men and tradesmen should be called to the dignity "of knighthood, to take the place and precedency of the "ancient and *noble gentry* of the realm. And the eldest "son of a knight is an esquire, *as his father ought to be,* "before he is called to the dignity of knighthood."

After a patient and careful examination of the lords' reports, the ancient statutes, and the records of both England and Ireland, the conclusion forced upon the understanding is—that previous to the reign of Henry the Third, although the sovereign occasionally called councils, and asked their advice, which he followed or not, at his pleasure, there existed no *deliberative legislative assembly in England;* that the parliaments of the reign of that king

were temporary revolutionary conventions, arising out of, and the natural consequences of civil wars and commotions; that their enactments were abrogated by the king after the battle of Evesham, and things returned to the *status quo ante bellum.* Edward the First, feeling he required the assistance of his people, and that his power would be thereby strengthened, first promulgated the principle, which he called the *lex justissima,* viz. *where all were interested all should be consulted,* summoned the first *legislative assembly* ever convened by legal authority in England. When his turn was served he seemed to have forgotten the principle; or, perhaps, he only considered the emergency as one requiring and calling for extraordinary measures, and that the assembly he then called, was not to be considered as one of *periodical convoking,* but only to be adopted on pressing national calamities or dangers: it appears certain, he acted as if he considered the summoning that assembly did not abrogate or diminish his own power and royal prerogative, or as establishing any thing like a free constitutional assembly, for legislative purposes, to be summoned at regular periods; for we find him afterwards altering statutes, and enacting new laws of his own mere motion.

His weak son and successor, soon fell into the power, and under the control of his ambitious and powerful barons, who usurped from him all the royal prerogative, as well the executive as the legislative, and nominated themselves sovereigns under the title of *lords ordainers;* and arrogated also the character of representatives of the nation, but did every thing in the king's name, as if by his authority; these proceedings produced civil wars, in

which the king and the barons alternately prevailed, and in the fifteenth year of this reign, in order to settle the question of legislation, and define the royal prerogative, it was, *for the first time*, enacted, *that the legislative authority should be in the king, with the advice and assent of the lords, spiritual and temporal, and commons, in parliament assembled.*

This enactment was a compromise for mutual safety between the king and the barons; the representatives of the landholders, the citizens and burgesses, were called into action, after the revolutionary example, set by Montfort, earl of Leicester, in the reign of Henry the Third; this may be considered the first successful and effectual attempt, to settle a free constitutional government. The assembly was afterwards modified from time to time, until the reign of Henry the Fourth, about which time it obtained the division into two distinct houses, as it has since continued.

Thus the parliament was the creature of political convulsion, and the result of a continuous struggle of near two centuries, between the kings and their barons. As it did not arise in any respect from feudal institutions, it is not possible that the titles or dignities consequent on feudality, can have any reference to that legislative assembly, and feudal or territorial honours, whether earldoms or baronies, must have been totally distinct from, and altogether unconnected with *sitting in parliament.*

But it will be said, that these feudal barons were liable to attend, and were fined for not attending the king's par-

liaments. This is true, but here we have two distinct and different things called by the same name; the *aula regis*, or king's high court of justice, was also called a parliament, during the reign of Henry the Third, and the feudal barons were liable to attend that court of justice, of which they were *(quasi jurors)* suitors, or *sectatores*, and decided matters of fact by their votes. *Mr. Reeves, in his able history of the law of England*, vol. i. p. 84, explains the character of these sectatores, in a clear and satisfactory way, and shows the true meaning of the words *pares curiæ*.

"The earliest mention we find of any thing like a jury, "was in the reign of William the Conqueror, in a cause, "upon a question of land, where Gundolph, bishop of Ro- "chester, was a party. The king had referred it to the "county, that is, to the *sectatores*, to determine in their "county court, as the course then was, according to the "Saxon establishment; and the *sectatores* gave their opi- "nion of the matter. But Odo, bishop of Bayeux, who "presided at the hearing of the cause, not satisfied with "their determination, directed, that if they were still con- "fident that they spoke the truth, and persisted in the "same opinion, they should chuse twelve from among "themselves, who should confirm it upon their *oaths*. "It seems as if the bishop had here taken a step which "was not in the usual way of proceeding, but that he "ventured upon it in conformity with the practice of his "own country; the general law of England, that a ju- "dicial inquiry concerning a fact should be collected, *per* "*omnes comitatûs probos homines*. Thus it appears, that "in a cause where this same Odo was one party, and

" archbishop Lanfranc the other, the king directed *totum*
" *comitatum considere*, that all men of the country, as
" well French as English, (particularly the latter) that
" were learned in the law and custom of the realm, should
" be convened; upon which they all met at Pinendena,
" and then it was determined, *ab omnibus illis probis*, and
" agreed and adjudged *à toto comitatu.* In the reign of
" William Rufus, in a cause between the monastery of
" Croyland and Evan Talbois, in the county court, there
" is no mention of a jury; and so late as the reign of
" Stephen, in a cause between the monks of Christ
" Church, Canterbury, and Radulph Picot, it appears
" from the acts of the court,* that it was determined *per*
" *judicium totius comitatus.*†

" This trial by an indefinite number of *sectatores* or
" *suitors* of court, continued for many years after the Con-
" quest; these are the persons meant by the terms *pares*
" *curiæ*, and *judicium parium*, so often found in writings
" of this period. Successive attempts gradually intro-
" duced jurors to the exclusion of the *sectatores*; and a
" variety of practice, no doubt, prevailed till the Norman
" law was thoroughly established. It was not till the
" reign of Henry II. that the trial by jury became gene-
" ral, and by that time the king's itinerant courts, in
" which there were no *pares curiæ*, had attracted so many
" of the country causes, that the *sectatores* were rarely
" called into action."

The barons were the *sectatores*, and *pares curiæ*, of the *aula regis*, or king's high court of justice, and certain of

* Bib. Cott. Faust, A. 3, 11, 31. † Hickes Thes. Diss. Ep. 36.

them were summoned to attend at the periodical meetings of that body at the usual terms; any baron *might* attend, but those who *had been summoned* were liable to fine and amerciament, if they were absent; thus barons often appear to have taken part in the acts of the king's baronial court, whose names do not appear on the list of those summoned, and some of those whose names appear on the list summoned, are not affixed to certain letters written by the barons present. *A certain number* was necessary to constitute the *plenum parliamentum*, or full court, without which, no business could be done. In France, four was the minimum.

After the establishment of a legislative parliament, this high court was united to it, and for some time continued its operations under the name of the high court of parliament, and pleas and suits of original jurisdiction were entertained, heard, and decided with all the regularity of the legal terms of modern times; and, it would appear, that one of the last modifications was limiting the judicial character of the parliament to appellant jurisdiction; the greater number, but not all, the rich and powerful magnates and proceres of the nation, were the prelates, earls, and barons, who were *sectatores* in the king's former high court, and as such, if summoned, still bound to attend the parliament, to which the judicial character and power of the king's court had thus been united; and, in their newly-settled constitution, Edward I. and II. naturally summoned the most influential of them among the peers, and thus the feudal baron and the peer in a few generations were considered the same, because they were called by the same name.

Bracton lays it down as law, that the king was in his time, the *maker and interpreter* of the laws; his words are—"Si dictio aliqua duos contineat intellectus domini "regis erit expectanda interpretatio et voluntas, *cum ejus* "*sit interpretari cujus est condere.*" From such authority so plain a dictum should be conclusive; he was a judge itinerant in the twenty-ninth year of Henry III. The fiction that the king is the sole enacting power, has ever been kept up, even after he ceased to be the real only legislator—all bills for new laws or enactments were in the nature of petitions, "*prayen the commons,*" or, for a private bill, on the petition of an individual—and now are, "*May it, therefore, be enacted by the king's most ex-*"*cellent majesty,*" to which, however, are added the important words, "*by and with the advice and consent of the* "*lords, spiritual and temporal, and commons.*"

That a correct judgment and conclusion may be obtained, as to the nature of the dignity of a peer, it is expedient to investigate, not only the constitution of the government of England, from the Norman conquest to that period when the parliament of England assumed its present form, but also the institutions of the French, Anglo-Saxons, and Normans; for the feudal system which obtained in England after the Conquest, was a melange from the three systems, which, although they differed in many respects, yet were very nearly allied to each other. The French nobles were more independent, and possessed more authority in their fiefs, than the Normans and Saxons; they had the power of making war with each other, or even with their sovereign, *if justice were delayed*—of coining money—of administering justice, and

the patronage of churches. They were little short of sovereign princes, over whom the sovereign, or lord paramount, possessed but the authority as the federal head of the whole state; such were the dukes of Bretagné, Acquitain, Lorrain, Burgundy, Normandy, and many others, some of whom were more powerful than the king himself. To the king they, indeed, did homage, but they often bearded him in his capital, and sometimes laid violent hands on his person.

Previously, therefore, to entering into the examination of the English feudal institutions and parliaments, it is proposed to take a brief review of those of France, from which the Normans and Saxons, no doubt, borrowed their feudal customs. Normandy, which was but a fief of France, and owed homage and fealty to the sovereign of that state, was separated so late as A. D. 912, by Charles the Simple; it was, however, an independent state, its dependance, in every important feature, being merely nominal. Its vassals had not the same extensive rights as those of France, although they bore the names of counts and barons; they could not appear in arms but under the commission of the duke, and in other respects their powers were more limited. This arose from the policy of the dukes, who, to protect and support their own powers, so modified the feudal law. The Norman nobles were the subinfeudations of a vassal, but, although they did not hold of a sovereign, in all minor matters, they possessed similar powers with the barons of France.

This course has been adopted, because the feudality of France was more unmixed than that of England, and

would afford more clear and succinct ideas of the true character of the system, and enable the reader to understand the subject better by putting him in possession of first principles. It is a remarkable fact, that the institution of the *states-general of France,* was nearly contemporaneous with the establishment of *legislative parliaments* in England. In the former country the *name of parliament* was confined to the courts of justice; in England they united the legislative to the judicial authority, and continued the name of parliament to the newly instituted legislative assembly, which differed little, in other respects, from the states-general of France.

Next will be considered the feudality of the Saxons, and the institutions introduced by the Conqueror, and continued by his seven immediate successors, with a brief review of the councils, assemblies, and legislative events of the succeeding reigns, the reports of the Lords' Committees, on the nature of the dignity of a peer of the realm, an account of the introduction of the English law into Ireland, and of the parliaments of that country, and those of Scotland.

Such is the general plan which, after much consideration, appeared the most adviseable and satisfactory to be adopted in this essay.

CHAPTER II.

THE ANCIENT COUNCILS, PARLIAMENTS, PEERS, AND NOBLES OF FRANCE.

THE history of the parliaments and councils of France, elucidates, by analogy, the history and nature of those of England. The customs and laws of the two countries were very similar, and more analogous than is generally imagined. The ancient constitution of both were of the same genus, but the difference of locality, produced a slight variety in the plant.

Boulanvilliers, in his history of the ancient parliaments of France, imagined that in the time of Charlemagne, a free legislative assembly enacted laws, and provided for the necessities of the nation, which succeeding kings gradually encroached upon, and eventually entirely suppressed. There is much fancy and romance in the idea; this able and intelligent writer draws largely on his imagination, for the history of the assemblies of those early days, having few materials either in record or history. He says, "we have not remaining any law or ordinance,

" of the first times of our monarchy, that does not *wear*
" *the marks* of the consent of the general assembly of the
" *Champs de Mars ou de Mai*, in which it passed."

The early French parliaments or councils, appear to have been composed solely of those greater lords, or rather vassal princes, who held immediately of the crown, and bore afterwards the titles of peers of France, and were not a legislative, but a judicial body.

Speaking of the parliaments held previous to the reign of Hugh Capet, he says—

" But, in fact, these parliaments are very different from
" those described in my former letter. In the first place,
" in regard of the representatives, Germany, Saxony,
" Bavaria, Lorrain, Brabant, Friseland, the Burgundies,
" Dauphiné, Provence, Italy, the marches of Spain, being
" no longer members of the monarchy; besides that,
" France being itself divided into an infinite number of
" particular sovereignties, the direct vassals of those who
" had possession of them *were no more looked upon as*
" *members of the French state*, nor consequently were
" they qualified to enter into the parliament. It was for
" this reason that the count of Chartres and Blois, was
" excluded from the parliament of 964, because he was
" not *an immediate subject of the crown*;* and that hold-
" ing his patent of a particular lord, though vested with
" a title of France, he was obliged by his oath to other
" interests than those of the king."—p. 89, i.

* He held of the duke of France and count of Paris.

Mezeray has laid it down as a principle, that, during the first ten monarchs, the French government should be considered as a great fief or feudal community, of which the king was chief, or lord paramount, but under certain conditions, the principal of which was, that he owed protection to every one. In that condition, far from excluding the princes and lords, possessed of fiefs, from the conduct of public affairs, the king had no right alone to dispose of them, or even to undertake a general war, that is a war on account of the whole federal body, without their consent, though he had power to make one by himself, in his character as a separate prince, but his vassals were under no obligation to serve him in such a war; whereas, they were, by an exact fidelity, bound to serve him in military service, as well as in councils, when they were all equally interested.

The constitution of the German Roman empire was an excellent example of a feudal sovereignty, each member was bound to render their quotient of men and money for general defence, while each possessed, in other respects, sovereign power in their separate states.

Charlemagne having taken the idea from the example of the people of the North and the Lombards, introduced the feudal system into all his territories, and thus the term *vassal* is made use of in all charters and ordinances, to express *a man engaged in the service of another by the possession of lands.*

The first example of feudality I find mentioned in history, was in the year 584, when the Lombards who had

been governed by thirty-two dukes, chose a king, and obliged the dukes to acknowledge and swear allegiance to him, and to furnish him with a certain number of troops, for the defence of the nation.

Normandy was granted in 912, by Charles the Simple, under the name of a fief; the duchy of France and county of Paris, were the patrimony of Hugh Capet, and those dukes made subordinate infeoffments of parcels of the great fiefs which they held of the king, but these lords of subinfeudation were not considered *vassals of the crown*, but particular *subjects of their dukes*, to whom they engaged their fealty and homage. Such for example, were Thibaud le Trichard, count of Chartres, Tours, and Blois; Ingelger, first lord of Gatinois, afterwards count of Anjou, and many others. Nor did infeoffments stop there, the second produced thirds, and those fourths and fifths, and so on.*

M. Le Fevre Chantereau, says, that *feod* signifies *possession for pay*, for which there is no fief below that of a *haubert*, or full arms, whose proprietor was obliged to knights' service in complete armour. This in England was called a *knight's fee*. Louis le Debonaire, established in his duchy of Aquitain, during his father's life time, besides many counts and abbots, who were lords of the *hautetage*, (or *first rank*) subordinate dignities with the title of *vassi*, dignities, similar to those in England called *valvasores*, which were afterwards called *castellains* in France; these were dependant on more noble fiefs, which always had many castellains. Above the

* Boulanvilliers.

counties were duchies, but they were few in number, in the reign of Charles the Bald, there were but those of *France*, *Aquitain* and *Septimania*, *Lombardy* and *Lorrain*. *Normandy* was afterwards dismembered from that of *France*. Thus over all was the king, or the lord paramount, but not to the subinfeudations, the duke being lord of the count, and the count of the castellain, or vavasour, and he of the possessor of a simple knight's fee.

It appears, therefore, that the king, or lord paramount, had no jurisdiction in the territories of their great fiefs, and could do no more than, as the federal head of the whole community, call for their services, on occasions of foreign aggression, and not on any matters of internal regulation or government, in which the vassal duke was as much sovereign as the king himself, in his own particular territories, and they were, therefore, styled *pairs de France*, and were, indeed, the king's equals, really and emphatically, saving his *suzerainty*.

The *original noblesse* of France was confined to the *descendants of the Franks*, all the rest of the inhabitants were serfs or slaves, in England called *villeins*, and in France, in after ages, *roturiers*.

Louis le Gros, began enfranchisement by granting charters of liberties and customs to the great towns, with the remission of *tailles*, or taxes, at will, and that of *mort taille*, (or *heriots*) by which the lord consented that children should succeed their father in land or goods, and also the right of fixing their abode where they pleased.

The most ancient instance of this law is fixed to the middle of the eleventh century. Baldwin, earl of Flanders, the earls of Hainault, and the lords of Liege, Avesnes, Lisle, Doway, Rhetelois, and Poix, granted like privileges to their subjects. *Louis Hutin,* issued orders for the manumission of all the serfs of the kingdom, and Henry the Third granted letters for general enfranchisement, but they were opposed by D'Aumont, count of Chateau Roux, and other lords, and so failed in their object; these lords considered the decree an infringement of their rights.

Previous to this period, nobility was considered in France an *incommunicable quality* inherent in the blood, and the idea that the king was the *fountain of honour*, and could communicate nobility, by grant, was not considered law; but shortly afterwards a great change arose out of the enfranchisement of the cities and towns, and the consequent acquisition of riches by plebeian families, namely, the practice of the king *ennobling by patent.* The first instance of the exercise of this right was by Philip the Third, who granted patents of nobility to one *Raoul,* a goldsmith, in 1271, which is supposed to be the only instance in that king's reign. In 1281, during the reign of Philip the Fourth, there was an arrêt, or decree of parliament, declaring the king's right on that point, and six or seven patents were issued by that king. Each succeeding monarch followed these examples, and Boulanvilliers says, "by such methods, above 40,000 families, "most of whom sprung from servitude, have acquired "honours and rights, formerly solely reserved for the "conquerors of Gaul, so that, without attention to facts

" and history, it is now an established maxim, '*that all* " *mankind being born under the condition of servitude,* " *there is no distinction among men, but of having sooner* " *or later got out of it.*' "

Hugh Capet, who was duke of France and count of Paris, at his accession to the throne, became lord paramount of the two description of fiefs, *as king* and as *duke of France*, some holding of him, as *of the crown*, and others, as *of his duchy*. The latter were more numerous, the former the more considerable in dignity and importance. The duchy itself, as a *pairy of France*, being held of the crown, became merged in his royal dignity, and escheated to the crown, as in England, where the nature of the holding, or tenure, would not have been changed by the escheat, but " the policy of Hugh Capet (says Bou- " lanvilliers) and his posterity, was to place the tenants " of both on the same level, not by raising the vassals of " the duchy to the condition of those of the crown, but " by bringing down the latter to equality with the former. " This is what introduced the term of *barony*, to dis- " tinguish a great fief, holding of the king, without dis- " tinction, title, or homage."

It may be doubted that this is a correct view of the case, the *barons* of any seignory were the *peers* thereof, and although the kings of France might make, after the duchy merged in the crown, those who held *as of the crown*, and those who held as of their castle of the Louvre, *the caput of the duchy of Paris*, equal in point of rights, the term barony certainly existed long before this period. It might be more properly said, that the king confounded

the greater fiefs with the barons of his duchy; this, however, did not fully obtain until the establishment of the states-general, which was, in fact, a *new legislative constitution*, differing in its constituent parts from the ancient courts of peers, which were purely judicial.

Again, he says, "if I am asked, what were the real "and undisputed rights of lands possessed in barony? I "shall answer, they may be reduced to four, viz.—

"1. The administration of justice.

"2. The right of the mint or coinage.

"3. The protection of churches, with the collation or, at least, direction of election to benefices.

"4. And the right of making war.

"I shall not speak of the last, *because it was a common* "*custom, that every possessor of a fief had a right to* "*make war upon his enemy, without permission from* "*any body, further than is necessary to explain the man-*"*ner of carrying it on, and the circumstances which ren-*"*dered it necessary.*

"Justice was administered in Burgundy, and south of "the Loire, by the lords, or their bailiffs, or seneschals, "by their reason and conscience, because in those coun-"tries there were few *Franks*. But in the French lands, "*the peers of every fief, being assembled at certain terms* "*before the lords* or their seneschals, *gave their judgments* "*by plurality of votes,* which was not only the common "way, but was also the practice of the king's court, when "*the peers*, viz. the immediate vassals of the crown, were "assembled twice a year to judge disputes among them-

" selves or those that had any relation to their common " feudality. All persons complaining of a denial of " justice, had the privilege of addressing this tribunal, " though it was not always a sure means of redress, which " often reduced the vassals to the necessity of *making* " *war* against the king, on the principle *that faith being* " *reciprocal between lord and vassal, the party, in respect* " *of whom it was violated, might require reparation even* " *by force of arms.*

" *Peerage was a dignity, consequent to the possession* " *of a fief, which gave the possessor a right to administer* " *justice, in conjunction with his equals, in the courts of* " *the fief of which he held, either in contentions or feudal* " *matters.* And from that principle we ought to conclude, " that every fief had its peerages, *i. e.* other inferior fiefs " holding of it, whose possessors, deemed equal among " themselves, composed the court of the lord paramount, " and had a right to judge in all causes within the extent " of the same fief in conjunction with the lord, *or without* " *him.*" Peter de Fontaine, in the book of *Conseil a son amy*, says, " you ask me how many *men are requisite for* " *giving judgment*—I answer, *certainly—four are suffi-* " *cient.* Wherefore, every feudal court having less than " four peers, and there were some, could give no judgment " unless the lord paramount *lent some of his peers* to his " vassal to make his judgment complete.

" The common practice of Flanders, Hainault, and " Artois, where the landed men, that is to say *the peers* " of each lordship, still render justice,* even under the

* Before the Revolution of France.

" king's obedience, is a proof of what has been advanced. " Nevertheless, the bailiff has no deliberative vote, or any " other function, but that of charging the peers on the " evidence, collecting their votes, and declaring their " judgment. In France, the lord was not excluded from " judging, except when he had an interest, and the king " was never subject even to this exception. Moreover, " all the world knows that the count of Champagne had " his seven peers; Vermandois six, Ponthiers, and the " others, theirs, *except Normandy*, where justice was ori- " ginally in the hands of the prince, and was not exer- " cised but by virtue of his commission, though the " noblesse of that province usurped several customs of " the other parts of the kingdom, which gave rise to the " civil wars, which disturbed Normandy during the reigns " of the sons of William the Conqueror. But what more " precise and conclusive example can be adduced, than " *that the great vassals of the crown itself held the king's* " *court, and administered justice according to the con-* " *stant rule of all fiefs.*"

It is not a settled point, when the peers of the king's court of France were reduced to twelve, but it is generally fixed at the coronation of Philip, son of Louis le Gros, at Rheims, on Easter Sunday, 1129, in the presence of Henry I. king of England, who there discharged the functions of a peer, as duke of Normandy.

It may easily be imagined, that it was the interest of kings, circumstanced as the sovereigns of France were, to destroy the power of the great fiefs, which were often his most bitter enemies, and, therefore, it was their

policy from the time of Louis le Gros, to humble them; at length they succeeded in depriving them of all power and united their fiefs again to the crown. Philip the August, wrested Picardy from his wife's uncle, Philip, count of Flanders, who had given him Artois with his wife, and afterwards with force and arms took from John, king of England, Normandy, Anjou, Maine, Touraine, and Poictou.

In 1204, Philip held an assembly of grandees of the kingdom, at Villeneuve-le-Roy, near Sens, in which he issued an ordinance styled *stabilimentum feudorum*, which ordains, that the coparceners of a fief should hold of the chief lord, and perform the service due for the whole fief according to the share of their dividend. It was made in the name of the king, the duke of Burgundy, the counts of Nevers, Boulogne, St. Paul, and several others.

This ordinance shows, that the king could not make laws to bind the fiefs of those lords, without their consent, but each lord could make laws to bind their respective vassals.

In this reign, the king and the great lords began to draw revenues from their serfs, by *selling them privileges;* trade flourished, and the freed men began to amass wealth; afterwards, by degrees, entering into the army, and the practice of the law, they acquired official consequence, which soon led to personal rank, and induced the issue of patents granting the rank and privileges of noblesse to persons of plebeian birth.

In 1216, a parliament was called by Philip, at Melun to examine and decide the dispute respecting the descent of the county of Champagne; it was decided, *by a plurality of votes*, the king being present, that according to the custom of France, the lord paramount having once seised a vassal, by receiving his homage and fealty, could not receive another to the same faith. The king and the lords on this occasion, each delivered to the countess of Champagne, sealed instruments, copied from each other, reciting the common resolution, beginning as follows:

" It has been adjudged by *the peers of our kingdom*, " viz. the archbishop of Rheims, the bishops of Langres, " Chalons, Beauvais, and Noyon, Eudes, duke of Bur- " gundy, several other bishops, as of Chartres, Auxerre, " Senlis and Lisieux. The counts of Ponthieu, Dreux, " Bretagné, St. Paul, William de Roches, seneschal of " Anjou, the counts of Soigny, Beaumont, and Alençon, " we being present and approving," &c.

This is printed in Chantereau's collection, from the chartulary of Champagne, and is cited by Boulainvilliers.

Louis VIII. in 1223, held a parliament at Paris, when he made an ordinance, of which the following is an introduction:

" Louis, &c. Know ye, that with the will and con- " sent of the archbishops, bishops, counts, barons, and " knights of the kingdom of France, we have made an " establishment for the Jews, which those whose names " are underwriten, have sworn to observe.

" William, bishop of Chalons,
" The count of Perche,
" Philip, count of Boulogne, the king's brother,
" The duchess of Burgundy, as guardian to her son,
" The countess of Nevers,
" Walter, count of Blois,
" John, count of Chartres,
" Robert de Dreux, for himself, and for Peter, count of Bretagné,
" Guy, count of St. Pol,
" Hugh de Chatillon, his brother,
" The count of Namur,
" The count of Grand Pré,
" The count of Vendosme,
" Robert de Courtenay, butler of France,
" Mathew de Montmorency, high constable of France,
" Archambault de Bourbon,
" William de Dampierre,
" Amauley, seneschal of Anjou,
" Dreux de Mello,
" The viscount de Beaumont,
" William de Chauvigney,
" Gaucher de Joigny,
" John de Vielzui,
" William de Saligny."

M. de Boulanvilliers, appears to consider this document as fixing, or deciding the precedence of those who signed it, but the arrangement of the signing was apparently accidental, and without any such object.

In 1230, Louis IX. commonly called St. Louis, held a

parliament at Anceny, in Bretagné, in which it was resolved, that Peter, count of Bretagné, having forfeited by rebellion, ought to be deprived of the guardianship of his son, and that his vassals were absolved from the oath of fealty they had taken to him. The act commences, "To all present and to come, &c. &c. the arch-"bishop of Sens, the bishops of Chartres and Paris, the "counts of Nevers, Blois, Chartres, Montfort, Vendosme, "Roussi, Mathew de Montmorency, constable, John de "Soissons, Stephen de Sancerre, the viscount de Beau-"mont," and others; barons and knights without any other distinctions of peerage.

In the parliament held at St. Denis, in September 1235, of forty-one barons, with the duke of Burgundy at their head, no distinction was made of the peerage, and the simple knights were mixed with the greatest lords and domestic officers; so that notwithstanding the idea formed of a dignity superior to all the others, *called the peerage, and confined to six bishopricks, and six of the greatest fiefs*, at this time the principle was established, that an equality of suffrages belonged to all who sat in the parliament.

In 1240–1, the king assembled a parliament at Paris, to which the peers of France, the barons, and prelates, were summoned, *and deputies from the good cities* were called for the first time.

St. Louis began the system of purchasing from his vassals, the right of administering justice within the liberties

of the great fiefs, which eventually made the kings masters and deciders of all private differences, and sovereigns of all France.

Before the year 1255, the kings could not legally exact any acknowledgment of submission from those who were not their own vassals; the lord of Joinville being ordered, with other barons of France, to Paris, in 1248, to swear allegiance to the king's children, he being beyond seas, refused to take the oath, on the ground that he *held no fief from the king*. Thibaut d'Amiens, archbishop of Rouen, from 1227 to 1234, having had the temporalities of his see taken by the regent, the latter was obliged to restore them, it having been proved, that he *held nothing from the crown.*

M. de Boulanvilliers observes, that the parliament of France, after this period, became *purely a court of justice*, which meddled no more with state affairs, but only gave judgment in private disputes. It had, in fact, never been otherwise, except where the weakness of the prince incidentally gave power to his nobles.

Philip the Fourth, called the Fair, was the first of the kings of France, as before stated, who assumed the authority of ennobling plebeian blood: the people of his day had forgotten that nobility was a natural privilege, *incommunicable but by birth*, and that French nobility was founded solely on the equality of origin in the blood of the conquering Franks. In consequence of this change introduced by Philip the Fair, it was afterwards considered a personal distinction.

As to the institution of new peerages after this period, there seems to have been no better reason for the erection the duchy of Bretagné, or the county of Artois, into peerages, than that it was to replace the duchy of Normandy, and the county of Champagne. Philip the Fair, chose, indeed, the greatest lords, but his successors conferred the honour on many inferior territories, as Cureux, Beaumont le Roger, &c. Boulanvilliers observes:—

"The worst of it is, we cannot tell in what the right of "the peerage, in those days, precisely consisted, except we "determine it to *simple precedence; since all the barons* "*concurred in the common deliberations of the general* "*parliaments, and since it is certain, that whether peers,* "*princes, or lords of the blood, they all equally made a* "*body with the noblesse in the state assemblies, and were* "*comprehended in the common denomination of barons* "*of France.*"

No one can read over the foregoing brief detail of the parliaments of France, without being struck with the singularly strong resemblance it bears to the history of the English councils to this very period, when the representatives of counties were, for the first time, introduced, and the legislative parliaments of England were approaching their development. The simultaneous rise of the states-general of France, formed of the three estates, the clergy, the nobles, and the representatives of the cities and towns, is too remarkable a fact, to be attributed to any thing but the progress of opinion felt on both sides the channel, and equally revolutionizing the governments of both countries, by changing its essential compo-

nents, adopting the existing and constituted parts of the old court of parliament, of the clergy and nobles, and infusing the new principle of popular representation. The people had been enfranchised, and had acquired wealth and consequent power; it was, therefore, a natural consequence, that they should require, and receive a share of influence in the government; but they, at first, most humbly, and on their knees, expressed their opinions, mixed with their gratitude, for emancipation from slavery, as will appear by the following account of the meeting of the first states-general, then as much a novelty in France, as the parliaments similarly constituted were, at the same period, in England.

St. Louis, perhaps, considered that as the people had been admitted to possess their goods and effects in propriety, it was equitable to make them bear a part of the common expenses, and induced him to call to his general parliaments, the deputies of his good substantial towns. Nevertheless, they were not considered as a part of the body of nobility, but were allowed seats after the jurists and lawyers; nor were they considered judges, but merely consenting to the imposition of taxes affecting themselves.

"The assembly of the states divided into three orders "of clergy, nobility, and the third, or popular estate, (says "Boulanvilliers) was a *new idea* of Philip the Fair, and "*entirely unused till his time;* it was caused by his ex- "cessive expenses: he imagined, that by calling all the "orders of the kingdom to a common consultation, he "should gain their confidence, and they would feel them-

" selves bound to contribute liberally to relieve his neces-
" sities. Having taken the resolution, he published his
" letter to the barons, archbishops, bishops, and other pre-
" lates of France, calling them to assemble in the cathe-
" dral of Paris, on the 23d of March, 1301. He also ad-
" dressed like letters of summonses to the cathedral
" churches, universities, chapters, and colleges, to send
" their deputies, and to the royal bailiffs, to cause the
" communities of cities, towns, and territories, to elect
" deputies to represent them, empowered to deliberate,
" and to decide on the high matters he had to propose to
" them."

The coincidence of times and events in England, is too remarkable to be passed over; at this very period, the same drama was enacting in both countries; the representatives of counties, and cities, and towns, were summoned to the English communia concilia, which had also, a short time before, adopted the name of parliament; so much did the customs of the one country influence those of the other.

The clergy wrote a letter to the pope, and the barons one to the college of cardinals, which is subscribed by the several lords, and by the order in which they stand, we may form some idea for a judgment of their precedence, as the natural order appear to have been preserved in this case.

Louis, count of Evreux, brother to the king,
Robert, count of Artois, cousin-german to the king.
Robert, duke of Burgundy,

John, duke of Bretagné,
Fery, duke of Lorraine,
The counts of Hainault and Holland,
——————— Luxembourg,
——————— St. Pol,
——————— Dreux,
——————— La Marche,
——————— Boulogne,
——————— Nevers and Rethel,
——————— Eu,
——————— Comminges,
——————— Aumale,
——————— Forest,
——————— Perigord,
——————— Joigny,
——————— Auxerre,
——————— Valentinois,
——————— Sancerre,
——————— Monbelliard,
The sire, or lord of Coucy,
Godfrey de Breban,
Raoul de Clermont, constable,
The lord of Chateauvilain,
——————— L'Isle Jourdain,
——————— Arlay,
——————— Chateauroux,
——————— Beaujeu,
The viscount de Narbonne.

The chronicle of St. Denis, and the continuator of Nangis, gives the following account of the form and manner of the proceeding of this assembly.

The king being seated, Pierre Flotte, the chancellor, declared his Majesty's intentions for the reformation of abuses to have been much thwarted by the perverseness of his enemies, and particularly by the pope, who not only injured and oppressed the Gallican church, but dared to attack the king's sovereignty, and to assume a power in temporals as well as spirituals, and had excommunicated him for not submitting to his usurped authority. He then spoke of the attempts of the Flemings, and other matters.

The king himself then addressed the assembly, and directed each estate to make its own resolution, and communicate it separately.

The count of Artois answering on behalf of the nobles, thanked the king for the affection he had shown to the state, by his resolution to reform abuses, his opposition to the pope, and declaring they would resent and oppose his encroachment to the utmost of their power.

The clergy demanded time for consideration, at which the king was displeased, and demanded of them of whom they held their temporalities, and what were their duties? to which they answered, that they held them of him and his crown, and were obliged to defend him, his family, and the liberty of his kingdom, by their oath of fealty, but they besought his permission to apply to the pope. The count of Artois, on the part of the nobility, opposed any delay or appeal to the pope, as a violation of their liberties.

The third estate, *on their knees*, presented their petition to the following effect :—

" Most noble prince, Philip, by the grace of God, king " of France, the people of your kingdom beseech you to " preserve the sovereign franchises of your kingdom, hav- " ing no superior but God alone, and cause it to be pro- " claimed, that all the world may know it, that pope " Boniface errs manifestly, and commits a mortal sin, in " pretending to be sovereign of France in temporals, and " that the king of France cannot enjoy the revenues of " vacant sees," &c. &c.

The other assemblies of the states of France, were afterwards held much upon the same model ; it is not expedient or necessary to follow the history farther, for though it is full of interest and instruction, historically speaking, it is not necessary to illustrate the subject of the proposed inquiry.

It is clear, that the ancient parliaments of France, were merely the high courts of justice of the kingdom, and the peers or suitors sat there, as suitors, to decide by their vote the matters propounded to them ; that the assembly of the states-general was a novel institution by Philip the Fair, and had nothing feudal in its constitution, although the magnates et proceres of the nation were summoned to it, the judicial character of the court of parliament was still continued to that body, and not transferred to *the states-general,* as it was to the English parliament.

CHAPTER III.

THE FEUDAL COURTS IN ENGLAND IN THE SAXON TIMES, AND FROM THE CONQUEROR TO THE REIGN OF HENRY III.

THAT a modification of the feudal law existed in England under the Saxon kings, is clear, though, perhaps exempt from some of the rigours of the Norman system; but Blackstone goes too far in his zeal for the ancient constitution, when he asserts, that without the consent of the witanagemote, "*no new law could be made, or old one "altered!*" There is no evidence to justify such a conclusion; *non constat*, that the king was bound to consult that assembly, because he did consult them. An autocrat of Russia consults his council, but still is the legislator himself.

The following evidences establish the fact of Anglo-Saxon feudality:—A charter of king Ethelred, frees the land of the abbey of Abington, *a regali servitio*. A patent of the conquerors grants to Allan, earl of Bretagné, "*omnes terras et villas que nuper fuerunt Comitis*

" Edwini, in Eboracshire; cum feodis militum et aliis liber-
" tatibus ita libere et honorifice, sicut idem Edwinus eadem
*" tenuit ante obsessionem Ebor."**

The Leiger Book of St. Albans, mentioning king Offa's over-running Kent, says, " *convocatis omnibus sibi officium* " *militare debentibus.*" King Edgar gave a hundred to Oswald, bishop of Worcester, " *et redditiones socharium* " *et regis servientium.*"

Homage and fealty, due by reason of knight's service, were also rendered in the Saxon times; the Leiger Book of Abington says, " Turkilius *did homage* to the abbot of Abington for his lands;" he was afterwards slain in the battle of Hastings.

Ingulphus states, that Edward the Confessor, gave to Griffin and his heirs, the principality of Wales, *reserving fealty.* In Doomsday it is stated, that the burgesses of Canterbury, did homage for the manor of Northwood, in Kent.

Wardship, was also in effect before the Conquest. In Ina's laws, cap. 38, the mother was to be guardian, in soccage, of her children, and was allowed six shillings per annum in money, a cow in summer, and an ox in winter, for their support.

Likewise was *escuage* incident to knight's service

* See Archbishop Sancroft's Collectanea Curiosa, No. VIII. Sir W. Raleigh's Discourse on Tenures.

before the Conquest, as mention is made in Doomsday *de scutagio.* By reason also of the tenure by knight's service, the tenant was to serve in the war, as appears recorded in the Book of Worcester, in a cause between William, bishop of Worcester, and Walter, abbot of Evesham; the bishop claimed *soc, sac, sepulturam et gildam regis, et expeditiones in terrâ et in mare,* "the bishop "on the hearing, brought witnesses, who proved, that the "abbot in king Edward's time, sent soldiers for those "lands, and one was helmsman to the bishop, to carry "him beyond the seas. The abbot, therefore, submitted "*ad omnem rem sicut episcopus clamuerat.*"

That *relief* was due before the Conquest, appears by the will of *Ebifa, an earl,* cited by Lambard, and in the Confessor's laws, written by Ingulphus, mention is made of *reliefs.*

Copyholders are mentioned in many places in Doomsday Book, and Lambard says, he who held by base tenure, and not in villenage, was called a *churle.* Bracton saith, that in manors, which are the ancient demesne of the crown, there have been villeins before the Conquest, at the time of the Conquest, and after the Conquest.

Like the Franks in France, and other conquerors, the Saxons shared among them the lands of the Britons whom they conquered, and became the *nobles of the land,* and such of the Britons as survived the struggle, the slaves. The principal leader became the king, and the others Thanes, or Thegnes, or nobles, who were the suitors in the grand court of the nation. They held

their courts in their manors or territories, which were composed of their tenants by subinfeudation, very much in the same method as their Norman conquerors.

The Witanagemote, or assembly of the wise men, was the king's council, and Ethelbert is said to have enacted his code of laws by their advice, and to have summoned his bishops and other eminent clergy thereto. Other Saxon kings, as Lothar and Eadric, kings of Kent, called upon their wise men to advise in the enactment of their laws, as appears by the Saxon chronicle. The term wita, or witan, was used to express the king's council even after the Conquest; but it does not appear by any satisfactory evidence, that any council, worthy the name of a representative legislative assembly, existed among the Saxons.

Ethelwolf, in the year 855, held a meeting of his witas at Worchester, when tithes were granted to the church by, and with the consent of the bishops, abbots, abbesses, earls, and nobles of the whole land;* "*aliorum fidelium* "*infinita multitudine qui omnes regium chirographum* "*laudaverunt, dignitates vero nomina subscripserunt.*" This could not be considered in the light of a legislative assembly, farther than as to grant of a tenth of their property to the clergy, a privilege which may justly be concluded, the Saxon nobles possessed before the Conquest, and which the Conqueror confirmed to the nation by his charter, viz.—That no tax should be imposed without the

* Spelman's Concilia, 350. Ingulphus and Mathew, of Westminster.

consent of the nobles, who by themselves and their tenants, were to pay it.

Edward the Elder, commences his laws with "*Ego* "*Edwardus rex precipio*," &c. Ethelstone states his to have been made with the advice of his bishops, his earls or ethelings, or nobles, and witas, or sages, which Gurdon, in his history of parliament, makes out to be the *lords spiritual and temporal!* Like Edward the elder, Canute, commands his laws, "*per omnem Angliam observari* "*præcipio;*" and on the whole, the Saxon feudality appears to have been very similar to that of France and Germany. The nobles were the tenants of the king in capite, who were bound to suit and service in his courts and army. The peculiar laws and customs of the Saxons were, perhaps, more just, and equal; feudality, indeed, consisted rather in the administration of laws, than the laws themselves. Any system of law might be administered, or pleas entertained in the feudal courts, by the verdict of the majority of a county or community, or by a jury, according to the Norman plan. The lord paramount by himself, or his seneschal, was judge in his own court, and administered the laws therein; but he had no power to entertain pleas of the crown, or any pleas, but those included in the patent by which he held his lands. Some large fiefs had, indeed, cognizance of superior pleas, but they were, therefore, considered palatines, as will be shown hereafter.

The laws which William the Conqueror granted to all the people of England after the Conquest, are stated to be the same which king Edward, his cousin, observed

before him. William, at his coronation on Christmas day, after the battle of Hastings, took the same oath which was taken by the Saxon kings; and at Berkhamstead, in the fourth year of his reign, in the presence of Lanfranc, archbishop of Canterbury, for the quieting the fears of the people, he swore inviolably to observe the good ancient laws which had been made by his predecessors, the devout and pious kings of England, especially those of king Edward.

At the end of his reign, William added laws, which established the Norman feudal system in England, and in his charter he commanded them to be observed with those of king Edward, and as they are of importance in this discussion, they are here inserted.—

"We ordain, that all freemen shall bind themselves
"by homage and the oath of fealty; that within and
"without the whole kingdom of England, they will be
"faithful to king William, and his honours and lands will
"faithfully defend and preserve, against all enemies and
"strangers."

"We will, and strictly command and grant, that all
"the freemen of the monarchy of our kingdom may have,
"and hold their lands and possessions in peace, and free
"from all unjust exaction and taxation; (talliage) so
"that nothing shall be exacted or taken, save their
"free service, which of right, they are bound, and ought
"to perform to us; and as it was enacted to them, and
"each of them, and granted to us of hereditary right, by
"the common council of our kingdom."

"We ordain also, and firmly command, that all earls "and barons, knights, and servants, and all the freemen "of our aforesaid kingdom, shall hold themselves always "ready and well appointed, and prepared to perform their "said service with horse and arms, as they ought to be "when there is need, according to what they ought to do "by reason of their fiefs and holdings, and as we have "ordained them to do by the common council of our king-"dom, in fee and hereditary right."

"We ordain also, and strictly command, that all the "freemen of our whole kingdom be brethren, sworn man-"fully to defend our monarchy and kingdom, to the ut-"most of their power against all enemies, and to preserve "entire the peace and dignity of our crown; to give right "judgment and justice, by all means, to their power and "ability, without fraud or delay." This law was enacted in the city of London.

"We also command this, that all our subjects have, "and enjoy the laws of king Edward in all things, with "the additions of those which we have ordained for the "benefit of the English."

These few additional laws of the Conqueror, says Blackstone and Sullivan, made prodigious alterations in the properties of the landed estates in England, having introduced the feudal system of Normandy.

"In Saxon times, estates were generally the absolute "property of the holder, could be alienated at pleasure, "devised by will, were subject to no exactions on the death

" of the tenant, but a small heriot paid by the executor.
" The heir entered without the consent of the lord, and if
" there was no will, the sons all jointly inherited; no ward-
" ship or marriage exacted, if the heir was a minor. The
" Norman feudality introduced an exorbitant fine for alien-
" ation, *aids* for knighting the king's eldest son, marrying
" his eldest daughter, or ransoming his own person. *Reliefs*
" and *primer seisin* was to be paid by them, as the first
" fruits of his inheritance; and if a minor, the king, or lord
" paramount, had the whole estate during infancy; and
" when of age, he had to pay half a year's profits, as a fine
" for suing out his *livery*, and the price or value of his
" *marriage*, if he refused the wife imposed on him by his
" lord or guardian, to which was added the expense of
" *knighthood!*"

It has already been shown, that many feudal customs existed in England, under the Saxon kings, as *homage* and *fealty*, and *knight's service*, and *wardship*, *escuage*, *reliefs*, and *copyholds;* but it may be fairly presumed not to the same extent, as under the Normans. It is possible, that the feudal system obtained but partially, and only where it was made a condition of the grant of lands between the lord and the tenants under the Saxons; gavelkind and borough English, show that the Saxon law was not uniform and universal, in respect to tenures.

These laws were enacted by the sole power of the king, he makes reference, indeed, to the *commune concilium regni*, but it is only with reference to grants of aids or services, which, must be admitted, were not lawful without the consent of the payers. But had they been enacted

per commune concilium regni, it would only prove that the king *had consulted* the common council, not that he was bound to do so.

Thus the Saxon laws were recognized and continued by the Conqueror's charter, with certain modifications to make them accord with the Norman system. The thanes, or nobles of the English race, were, in their turn, for the most part, deprived of their estates, and the few who retained them held under the Norman tenures. If, therefore, the English did enjoy any constitutional government previous to the Norman conquest, which is more than doubtful, it was demolished by that event—we must, therefore, commence with the conquest, our inquiry for the events and causes, which led to the formation of the representative legislative assemblies of England.

The Conqueror possessing paramount authority, could, and did, grant such liberties to his new subjects as he thought expedient; the charter of those liberties is extant in the Red Book of the Exchequer; there can be no reasonable doubt of its authenticity; and as in it is contained no grant to the people, that their advice or assent should be necessary to legalize the enactment of laws, or that their assent should be necessary on any point, but the granting a part of their services or property, beyond what was due by their tenures, we may justly conclude, they possessed no other legislative power.

The grant of the laws of king Edward, was an enactment of grace, and did not convey the *Saxon constitution*, if any existed, but merely those laws which had been

enacted, or confirmed by that king, and were in force before the Conquest.

The charters of the succeeding kings, down to John's inclusive, were recapitulations or confirmations of the Conqueror's, and conferred no additional liberties.

The Conqueror's charter says, that the imposition of a subsidy, or tax, should not be made without the assent of the *commune concilium regni*, which, at first, would seem to indicate, that an assembly was to be called to express that consent; but many instances occurred, where the consent to an imposition was given individually, or by detached bodies, or communities, as well as by a national assembly, and *consent* being the sole object, if it were obtained, it mattered little *how it was expressed,* the imposition of the tax was legal on *all who assented.*

The Conqueror limited the power of himself, and his successors, only to the amount of the aforesaid consent, and to allow his subjects to enjoy the advantages of the laws of king Edward; but in every other respect the king was absolute, and could enact any laws not repugnant to the charter.

In the subsequent charter of Henry I. it is stated, that certain modifications were made in the Saxon laws by William, "*consilio baronum suorum,*" which seem to indicate the existence of a council; and, as the barons were emphatically the nation, or the only influential part of the nation, it might be inferred that their assent and consent to these alterations were necessary, and, therefore, they

possessed legislative power, if evidence did not negative that idea.

This charter of the Conqueror emanated entirely from himself, and the charter of John was likewise a *mere concession of the king;* the *motive* which induced the grant has nothing to do with the act itself—William *thought it expedient* to grant, John *was compelled* to confirm those liberties, still they were both *acts of the king,* and of him only. The clauses in all these charters, which required the sanction of the common council of the nation, were those only which referred to *services and aids beyond what was due by tenure.*

The following passages in inverted commas, are extracted from the First Report of the Lords' Committees, but the passages in Italic, &c. are not so distinguished in the Report:—

"Indeed, from the whole history of his (the Conqueror's) "reign, it is little probable, that he should have ever re- "sorted to a free gift from the people of England, to sup- "ply his necessities, or to add to his accumulation of "riches. His government is generally represented as "severe and arbitrary, even with respect to those who "were the companions of his adventure; confiscations "were numerous, and his Saxon subjects were gene- "rally reduced to poverty. The tenants of his de- "mesnes were not included in the exemption provided by "his charter; and London, and all the principal towns, "were *part of the king's demesnes,* and were long after "subject to talliage at the *will of the king,* bounded only,

" apparently, by a sort of custom requiring that the tal-
" liage should *be reasonable*, as a fine at the king's plea-
" sure was also bounded.

" When in England, he commonly held *his court* three
" times in every year, at Easter, at Winchester—at Whit-
" suntide, at Westminster—and Christmas, at Glouces-
" ter; and the contemporary historians (professing to
" have known him personally, and to have been for some
" time at his court) add, 'et tunc aderunt ibi *archiepis-*
" *copi, episcopi, abbates, comites, et barones totius Angliæ.*'
" But though the persons thus enumerated, are such as
" are *supposed* by many *to have formed the legislative*
" *assemblies* of the country, it does not appear from any
" existing document, that the assemblies thus ordinarily
" convened by the Conqueror at Easter, Whitsuntide, and
" Christmas, *ever* ACTED LEGISLATIVELY unless
" the *commune concilium*, by which the obligations of
" the military tenures were sanctioned, and the *concilium*
" *baronum*, by which, as appears by the subsequent charter
" of his son Henry, the alterations in the laws of Edward
" the Confessor were approved, may be deemed to have
" been one of those assemblies, and so constituted,
" though they appear to have been generally convened by
" William, for *purposes of state and dignity, and for the*
" *administration of justice rather than the legislative*
" *purposes*.

" On the whole, the government of William seems to
" have been, in a great degree, a military government,
" such as must generally take place upon a conquest,
" when the conquered do not submit quietly to the con-

" queror ; and, till towards the close of his reign, he can
" scarcely be said ever to have reigned in peace, even the
" foreigners whom he had established in England, fre-
" quently conspiring against him. *It is not, therefore, in*
" *his reign that there can be much hope of discovering*
" *clear traces of a constitutional government.*

" The government of William Rufus, the son and suc-
" cessor of the Conqueror, seems to have been, in the end,
" more arbitrary and oppressive than that of his father,
" and the Committee have found no document from
" which they can infer any thing important, with respect
" to the constitution of the legislative assemblies in his
" reign."

Thus in the reign of the two first sovereigns of the Norman race, their lordships found no trace of a legislative assembly; on the contrary, they have almost demonstrated that no such assembly could have existed during that period.

" Henry the First, obtained the throne, as his brother
" William had done, in exclusion of his elder brother
" Robert, and *seems* to have endeavoured to give vali-
" dity to his title, by what may *be deemed a legislative*
" *enaction.*

" A charter, issued by him on his accession, states that
" he had been crowned *communi consilio baronum totius*
" *Anglie*, and historians have described a numerous as-
" sembly convened at London, previous to his coronation,
" of clergy and laity, *probably by his own authority only*,

"in which he promised to grant this charter on his acces-
"sion to the crown.

"The charter proposes to relieve the nation from unjust
"exactions," &c. &c. &c.

This could not be considered a legislative assembly; the only object appears to have been to give a sanction to Henry's title to the crown, and to receive a charter at his hands: for, if this was a legislative assembly, every coronation of a king of England, may be considered a legislative meeting; for the assembled multitude are told, by the archbishop on all such occasions, that the late king being dead, he presents to them his rightful successor, and asks them if they will receive him as their king, which might be construed to imply that it was necessary to ask their consent, while it is merely a part of a ceremonial.

"There is also added to this charter, '*Lagam Edwardi*
"*regis vobis reddo, cum illis emendationes quibus pater*
"*meus emendavit consilio baronum suorum,*' &c. &c. a
"clause tending to give authority to the copy of the char-
"ter of William the Conqueror, inserted in the Red Book
"of the Exchequer, and from which, it may be inferred,
"that, in altering the laws of the Confessor, William had
"acted legislatively, by the advice of those termed his
"barons, though in the charter of William, it is not ex-
"pressed that this was done otherwise than by his own
"authority merely. This may also lead to a conjecture,
"that the '*commune concilium,*' mentioned in the charter
"of William, as sanctioning the charges of military tenure
"was also a *concilium baronum*.

"From the whole, however, of this charter, it may be "inferred, *that general powers of legislation, except for* "*the purposes of taxation*, were then, as well as in the "reign of the Conqueror, *deemed to belong to the king* "*either alone*, or with the assistance of his privy council, "or with the counsel of persons denominated his barons; "but if all who held of the king by knights service, were "not included as barons in the words '*consilio baronum*,' "used in different parts of this charter, yet the consent of "all the persons so holding, must, from the terms of the "charters both of William and Henry, have been requi- "site for the imposition of taxes on them."

Would it not be more accurate to say, that the general power of legislation vested at this period *absolutely in the king alone*, for if he had the power of consulting whom he would, his select, or his privy council, or his barons, and acting according to the advice given, or contrary to it, or legislating without any advice, it is evident the *real power was seated in him only.*

"If the king had occasion for extraordinary aids, it was "necessary for him, according to the *chartered law*, to "convene an assembly of his tenants by military service, "if not of all his tenants in chief, consistently with the "terms of his charter. But for other purposes, as far as "can be collected from any documents which remain, "it seems probable that he exercised legislative powers "without the convention of such a numerous assembly, "either by his mere authority, or with the sanction of his "selected council," or of those great persons "whose at- "tendance could be had without inconvenience."

"It has generally been considered as the law of the "land, that the *king had a right to require the advice of* "*any of his subjects,* and their personal services for the "benefit of the kingdom; but as, by the terms of the "charter of Henry, and of his father, no aid could be "required of the immediate tenants by military service, "beyond the obligation of their respective tenures, if "the crown had occasion for an extraordinary aid from "those tenants, it must have been necessary, according to "law, to assemble *all persons so holding,* to give their con-"sent to the imposition.*" They might be assembled in one assembly, or by communities, or might assent without assembling as hereafter shown.

"Historians mention, that Henry convened the great "men of his kingdom to assist him in his invasion of "Normandy, when he made his elder brother, Robert, "prisoner, and united again that province to his English "dominions, but it does not appear that he ever sum-"moned any assembly for legislative purposes.

"On the death of Henry, Stephen acquired the crown, "by means similar to his immediate predecessors. He "issued two charters, in the first of which he is styled, "'*Dei gratia assensu cleri et populi, in regem anglorum* "*electus.*' The second contains a general confirmation of "Henry's charter, but neither supply any information on "the subject of legislation. Stephen's reign was a scene "of tumult and trouble, so much so, that the accustomed "assembling of the '*curia regis*' ceased—there was no

* First Report, 40.

" peace—every thing was destroyed by the slaughter and " fire of civil war."

Henry the Second succeeded on Stephen's death, according to a compact made between them. His charter contains only a general confirmation of that of his grand father Henry the First.

Prior to the reign of Henry the Second, their lordships report, that they found no authentic evidence of the making of any laws or constitutions after the Conquest, except the charters before mentioned.

" The contest which the king had to maintain with the " usurpations of the church of Rome, produced the cele- " brated *constitutions of Clarendon*, which, according to " the evidence of history, were made *in an* assembly con- " vened in the tenth year of his reign, and are in the " form of a declaration and recognition, in the presence of " the king, of the customs, liberties, and dignities of his " predecessors, which ought to be observed and held in " the kingdom. And, because of the dissensions and " discords which had arisen between the clergy and the " justices of the king, that recognition was made before " the archbishops, bishops and clergy, and the *earls*, " *barons*, and *proceres* of the kingdom, and the same " customs were acknowledged by the archbishops, bishops, " and clergy, and the earls and barons, and *nobiliores et* " *antiquiores regni*. Thomas, archbishop of Canterbury, " and Roger archbishop of York, eleven bishops, and a " bishop elect, engage to hold and observe them in the

"presence of several earls and many others, '*proceres et* "*nobiles*,' both clergy and laity."

The eleventh article provides as follows:—

"Archiepiscopi, episcopi, et universæ personæ regni, *qui* "*de rege tenent in capite*, habent possessiones suos de "domino rege *sicut baroniam*, et inde *respondent justiciis* "*et ministris regis*, et secuntur et faciunt omnes recti- "tudines et consuetudines regias, et, sicut baronias cæteri, "debent interesse judiciis curie domini regis, cum baro- "nibus, usque perveniatur in judicio ad diminutionem "membrorum vel mortem."

The barons, therefore, were those who held of the king in chief, and were bound to attend the *aula regis*, the king's supreme court of justice, as suitors, and the archbishops, &c. and other clergy who held their lands of the king in the same way, were also bound to attend, as the other barons.—"This attendance on the court of a feudal "lord, was due from all his tenants, as the freehold tenants "of a manor are still bound to attend the courts of that "manor, *when required to do so by the lord of that* "*manor*."*

The Lords' Committees after considerable discussion, as to the meaning of the word *baron*, observe that—"The "constitutions of Clarendon afford strong ground for "presuming, that owing suit and service to the *king's*

* First Report, 44.

" *great court,* rendered the tenant *one of the king's barons,*
" or barons of the kingdom, and that all such *were properly*
" *MEMBERS OF THAT COURT,* though probably *none attended*
" *who were not specially summoned.*" *

If the king's court *was not a legislative body,* but merely a court of justice, the attendance of the barons thereon, was in the character of SUITORS, persons called for the purpose of dispatching the business of that court as jurors, &c. in the same way as the *freeholders* of a county are still summoned to attend the king's court of assize, or other courts, and although all are liable to be called, yet only so many are summoned as are necessary for the emergency. A freeholder not on the panel has no right to demand to sit, or even if on the panel, has no *right* to complain that he was not on the jury.

And if the *ancient curia regis* was *not a legislative assembly,* it follows that an individual, although bound to attend that court, could not be considered as a *member thereof,* any more than a freeholder would now be considered a *member* of the Court of King's Bench, although certainly a member of a jury.

A certain number of barons were necessary to form a quorum, to decide on the questions which came before the king's court, and when that number, or more, were present, it was a *full court,* and afterwards a *full parliament,* before whom pleas of the higher order were held, and sometimes the king required their advice or opinion on given points,

* First Report, 45.

but this asking of their opinion was not necessary to legalize the king's enactment.

The reign of Richard the First affords but little evidence on the subject of legislature, but that little tends to show that the king enacted laws, without the concurrence of legislative assemblies.

King John claimed the crown of England *by election*, and, therefore, naturally wished to strengthen his claim by the assent of his *court of barons*, and endeavoured to conciliate as long as he thought it necessary. He commences his proclamation in his fifth year—"*Sciatis nos "communi concilio baronum nostrorum constituisse*," &c. This was the act of a usurper, courting popular favour, not of a legitimate king—can it be, therefore, concluded, that the enactment, if from a lawful sovereign, would not have been binding if those words had not been inserted, when we find that *the other enactments emanated from the king alone?*

On the Patent Roll of the ninth year of king John, is a statute made by the king, *at the instance of William Marshall, and Walter de Lacy, and others, his barons of Ireland, who were with him in England, and his faithful of England*—he willed and enacted—"Volumus et "statuimus quod latrones Hiberniæ expellantur de terra "Hiberniæ, et quod ipsi et receptores eorum deducantur "secundum legem Angliæ. Et ideo vobis mandamus "quod id ita fieri faciatis." Here the king enacted a law by the advice of the people about him, and at the instance of certain barons of Ireland, who happened to be in Eng-

land at the time; evidently making the ordinance a law, without any formal assembly or other authority than his mere motion.

"The charter of John," say the Lords Committees, "is an authentic document, from which it has been at- "tempted to infer what were the *constituent parts of the* "*legislative council of the realm*, as then established. It "does not, however, give clear information on the subject, "though, perhaps, important inferences may be drawn "from it. It is remarkable that the provisions in this "charter, touching the convention of what is termed the "'*commune concilium regni*,' for the purpose there ex- "pressed, were *omitted in all the charters of Henry the* "*Third;* so far as those provisions may have tended to "alter the existing law, they must be considered as *hav-* "*ing been abandoned,* though probably founded on the "law of the land, as it stood before the charter, and af- "terwards in some degree adopted in practice."

The charter purports to be *the act of the king*, with *the advice* of the archbishops of Canterbury and *Dublin*, and divers bishops, *the pope's legate*, the master of the temple, &c. &c. who were in fact only the persons who were of the king's party in the transaction. Robert Fitz-Walter, the general of the discontented barons, not being named therein, nor any of his party; it was, therefore, a mere treaty of peace between two contending parties, and not a legislative act.

The articles from which the charter was formed, are entitled, "*Ista sunt capitula que barones petunt et domi-*

"*nus rex concedit*," they conclude, "*omnes istas con-*
"*suetudines et libertates quas rex concessit regno tenen-*
"*das, quantum ad se pertinet, erga suos, omnes de regno,*
"*tam clerici quam laici observabunt, quantum ad se perti-*
"*net erga suos.*" It was, therefore, a *grant* made unwillingly *by the king*, but conceding nothing which the clergy, barons, and people, did not consider their just rights, conferred in *former charters* by the Conqueror, and Henry the First and Second.

Their lordships observe, that it is "a *striking circum-*
"*stance*, that neither the king, nor the discontented
"barons, nor those who adhered to the king, *at any time*
"*appealed, for the decision of their differences to a* LE-
"GISLATIVE ASSEMBLY, to be convened for that
"purpose by any existing law," and "*that no article in*
"*the* charter has reference to the previous *existence of*
"*any assembly convened for the* GENERAL PURPOSES OF
"LEGISLATION, or contain any provision for *calling any*
"*such assembly in future*, or any provision purporting
"the existence by law of any *representative system*, for
"the purposes of *general legislation*, though it provides
"for the election in each county of twelve knights to in-
"quire into bad customs, to be abolished according to
"charter."*

Will the evidence extant, induce the belief, that any national legislative assembly, for general purposes, existed in England up to this period, if we consider the provisions of this charter of John alone? But the evidence mak-

* First Report, 63.

ing not the slightest reference to any legislative assembly, and moreover, showing the heretofore constant exercise of legislation by the king, on all subjects, except that of taxation, is so strong and conclusive, that a man's mind must be under some strong delusion, who would refuse his assent to a proposition so clearly and satisfactorily established, as that no such legislative assembly then existed.

The Lords further say that—"Some, however, of the "provisions in the charter of John, do refer to the con- "vention of an assembly, for the purpose of assessing *ex-* "*traordinary* aids to the king, and *scutage*, which was "generally a conversion of military service, due by tenure, "into a money payment; and various clauses recognize "persons distinguished by the apellation of '*comites*,' and "'*barones*,' but generally *with reference only to their* "*property*, and the charges by which it might be af- "fected."

The charter provides, first, for the privileges and immunities of the church; and that the clergy should be charged with no extraordinary aid without their own grant. To the laity it grants thus:—"Concessimus eciam omni- "bus liberis hominibus regni nostri, pro nobis et heredibus "nostris imperpetuum omnes libertates subscriptas, ha- "bendas et tenendas eis et heredibus suis, de nobis et "heredibus nostris."

The first provision which follows, respects reliefs:— "Si quis comitum vel baronum nostrorum sive aliorum "tenentium de nobis in capite per servitium militare mor-

" tuus fuerit et cum eum decesserit, heres suus plene etatis
" fuerit, et relevium debeat habeat hereditatem suam per
" antiquum relevium ; scilicet heres vel heredes comitis
" de *baronia comitis* integra, *per centum libras*, heres vel
" heredes baronis, de baronia integra, *per centum marcas*,
" heres vel heredes militis, de feodo militis integro, per
" centum solidos, ad plus, et qui minus debuerit minus det,
" *secundum antiquam consuetudinem feodorum.*"

After many other general provisions, the charter contains the following important article :—

" Nullum *scutagium* vel *auxilium* ponatur in regno
" nostro *nisi per commune concilium regni nostri*, nisi ad
" corpus nostrum redemendum et primogenitum filium nos-
" trum militem faciendum, et ad filiam nostram primoge-
" nitam semel maritandam ; et ad hoc non fiat nisi ra-
" tionabile auxilium. Simili modo fiat de auxiliis de ci-
" vitate Londoni; et civitas London habeat omnes antiquas
" libertates, et liberas consuetudines suas tam per terras
" quam per aquas. Preterea volumus et concedimus quod
" omnes alias civitates, et burgi, et ville, et portus, habeant
" omnes libertates et liberas consuetudines suas. Et ad
" habendum *commune concilium regni de auxilio assidendo*,
" aliter quam in tribus casis predictis, vel de scutagio
" assidendo, *summoniri faciemus archiepiscopos, episcopos,*
" *abbates, comites et majores barones, sigillatim per literas*
" *nostras*. Et preterea faciemus summoniri *in generali*
" per vicecomites et ballivos nostros, *omnes illos qui de*
" *nobis tenent in capite*, ad certum diem ; scilicet ad ter-
" minum quadraginta dierum ad minus ; et ad certum
" locum ; et in omnibus literis illis summonitionis, causam

" summonitionis exprimemus; et sic facta summonitione " negotium ad diem assignatum procedat, *secundum con-* " *silium illorum qui presentes fuerint,* quamvis non omnes " summoniti venerint."

The *commune concilium regni* was to be summoned *de auxilio assidendo,* but *for no other purpose,* or it would have been expressed in the charter. It cannot be presumed, that so important a privilege as that of changing old laws, and making new ones, would not have been expressed in distinct terms, clearly and plainly, if such a privilege had ever been enjoyed. But there are not grounds for such a presumption, such a privilege had never been *granted by charter*, and it *could not have been otherwise obtained.*

It is observable, that no provision is made in this charter with respect to aids to be demanded of the king's immediate tenants, who did not hold by military service, and were liable to talliage; or to the king's tenants in chief of an escheat; unless included in the words " *qui de nobis tenent in capite.*"

The struggle between John and his barons, arose from the violation of their rights, which had been granted by the previous charters of his predecessors. Few, *if any,* new liberties were then acquired; and it is a mistake to suppose, that any important change took place on this occasion in the constitution of the government of England, which had been *limited in principle,* but *absolute in practice,* but it was limited *only so far as had been conceded by charter.* John's charter reduced to practice the limited

principle of the government which had been disregarded. The frequent *confirmations* of the charters by the same *princes*, the successors as well as the predecessors of John, shows how little they regarded the liberties of their subjects, except when compelled by arms or their pecuniary necessities.

Neither record nor history will justify the conclusion, that any legislative assembly, properly so called, existed in England before the death of king John.

CHAPTER IV.

HENRY III.

HENRY, at his father's death, was but ten years of age, and his kingdom was miserably distracted. Louis, son of the king of France, was in the country, at the head of a considerable army, and many of the discontented barons had joined him. William, earl Marshall, was selected by the nobles, who adhered to the late king, as guardian to the young sovereign.

To conciliate the people, twenty-four days after his father's death, a new charter, tested 12th Nov. 1216, was issued in the king's name, by the advice of the pope's legate, the earls of Pembroke, Chester, Derby, &c. &c.— It is nearly a transcript of the charter of John, omitting, however, the important clause respecting the not-assessing an aid, except by the advice of the "*commune concilium regni*," and that of the manner of summoning the said common council, namely, that of summoning the greater barons by special writs, and the lesser by the sheriffs.—

There is a clause inserted, to account for this omission, to the following effect:—

"Quia vero quedam capitula in priori carta continebantur que *gravia et dubitabilia* videbuntur, scilicet de scutagiis et auxiliis assidendis," and adding, (after other matters specially mentioned, as omitted in the new charters) "placuit supradictis prelatis et magnatibus ea esse in respectu, quosque plenius consilium habuerimus; et tunc faciemus plenissime, tam de hiis quam de aliis que occurrerint emendenda, que ad communem omnium utilitatem pertinuerint, et pacem, et statum nostrum et regni nostri."*

The persons who were of the king's council, and advised the issuing this charter, are described in a letter to the justiciary of Ireland, announcing Henry's accession to the crown, in which he is made to say, "convenerunt apud Gloucestrem plures regni nostri magnates, episcopi, abbates, comites, et barones, qui patri nostri viventi semper astiterunt fideliter, et devote, et alii quamplurimi;" by whom he had been, with all due formalities, crowned king; and then referring to the charter, he announces his intention of granting like liberties to the people of Ireland, which he did by a writ tested at Gloucester, 6th Feb.

"Rex archiepiscopis, episcopis, abbatibus, comitibus, baronibus, militibus, et libere tenentibus et omnibus, fidelibus suis per Hiberniam constitutis, salutem. Fidelitatem vestram, &c. volumus quod &c. libertatibus regno nostro

* First Report, 77.

" Anglie a patre et nobis concessis, de gratia nostra et " dono, in regno nostro Hibernie gaudeatis, vos et vestri " heredes in perpetuum; quas distincte in scriptum re- " dactas, de *communi consilio omnium fidelium nostrorum* " vobis mittimus, signatas sigillis domini nostri G. aposto- " lice sedii, legati et fidelis nostri comitis W. Maresc. rectoris " nostri et regni nostri: quia sigillum nondum habuimus: " easdem processu temporis, de majori consilio, proprio " sigillo signaturi. Teste apud Glouc. 6° die Februarie."*

This first charter of Henry was directed to be published in every county, and the sheriffs were to have it read in his county court, "*Cartas libertatum quas baronibus et* " *omnibus aliis de regno nostro per commune concilium* " *regni nostri concessimus*," and the contents thereof were directed to be strictly observed by all the lieges.

In the letter to the justiciary of Ireland, the members of the council of Bristol, are stated to have been only prelates, earls, and barons, in this writ it is stated to have been made "*per commune concilium regni*," which shows the king's court of prelates, earls, and barons, were the *components of the common council of the realm at that day*. Henry was then in pupillage, and this council being invested with the royal authority, did every thing in his name. Had the king been of full age, this expressed assent or advice might not have been necessary, unless required by the king. There is another document which directs, "*per commune concilium regni*," that no charter or confirmation, &c. should be sealed with the great seal

* Fœd. N. E: I. p. 121.

during the king's nonage, and if any were so sealed they should be null and void.

"Provisum est eciam per *commune concilium regni* " nostri, et coram prædictis omnibus, quod si aliqua carta, " vel aliquæ literæ patentes, factæ secundum aliquam præ- " dictarum formarum, sigillatæ inveniantur predicto sigillo " irratæ habeantur et inanes. Testibus prenominatis et " multis aliis."

This provision related merely to the exercise of the royal authority, and was in fact but *an enactment by that authority,* then vested in the king's guardian and council, which was emphatically considered the *council of the kingdom.*

The charter of the second year of Henry III. likewise omits the clauses in the charter of John, respecting the assessing of scutage, and the convention of the common council of the realm, for the purpose of assessing extraordinary aids and scutage, without, however, assigning any reason for such omission as in his first; nor does it contain any new provision in lieu thereof; but, at the end, there is a provision *that scutage should be taken as it had been in the time of his grandfather Henry the Second,* which was a certain and fixed payment for every knight's fee.

Henry issued another charter in his ninth year, which their lordships say, " was afterwards always deemed *the* " *great charter of the liberties of the kingdom.*"* This

* First Report, p. 79.

also omits the before-mentioned clauses of John's charter. "It is remarkable, (says the Report) that Mathew Paris, "who was a cotemporary, was not aware of these omis- "sions, for he says, 'Istarum autem tenor chartarum "superius habetur expressus, ubi historia agitur de rege "Johanne, ita quod chartæ utrorumque regum in nullo in- "veniuntur dissimiles.'" It may be questioned if this charter of the 9th of Henry, was considered emphatically, as the *great charter of liberties*, for the charter transmitted to Ireland in the *twelfth year* of Henry, as the *great charter of liberties*, was declared in the accompanying writ to be *the charter of John*, by which it would appear, that John's *was* then considered the charter of liberties, and demonstrates that in those days there prevailed the vacillation, and uncertainty, attendant on all arbitrary and unsettled governments. This latter charter was granted in consideration of the grant of a fifteenth of all moveables.

Notwithstanding the omissions of the clauses in Henry's charters, "the substance," of them, "was agreeable to "the ordinary mode of granting aids to the crown, and of "convening an assembly for that purpose during part of "the reign of Henry, and during the reign of John, prior "to the charter," it was, indeed, but a conformity with the Conqueror's charters.

In his fifteenth year, Henry exacted scutage at a higher rate, than that provided by the charter, "*by the "consent of some by whom it was payable.*" Mathew Paris says, "Convenerunt ad *colloquium* apud West- "monasterium rex cum prelatis et aliis magnatibus regni,

" ubi exegit scutagium, de quolibet scuto tres marcas, ab " omnibus qui baronias tenebant, tam laicis quam prelatis."

" It appears that Henry had repeatedly urged, that the " charter of the ninth year of his reign had been sealed " during his minority whilst he was under tutelage, and " that it was not binding on him. At the same time his " arbitrary conduct, in various instances, had excited " great discontent and disturbance, and he had been re- " peatedly required to confirm that charter." At length, in the twenty-first year of his reign, he granted a confirmation in consideration of a grant of the thirtieth part of certain description of moveables, which is stated, in a writ, directed to the sheriff of Kent, tested 2d July, to have been granted by the archbishops, bishops, abbots, priors, earls and barons, "*totius regni nostri pro se et suis villanis.*" And to the writ is added a clause, that the grant should not be drawn into a precedent.* The grant from the clergy, "*terras habentes que ad ecclesias suas non pertinent.*" Mathew Paris states, that this assembly consisted of "*infinita nobilium multitudo scilicet regni tota nobilitas.*"

The commotions raised against the king in 1237, by Richard, earl of Cornwall, the king's brother, caused a meeting to be held at London, and Henry, in the thirty-seventh year of his reign, confirmed the charters of his ninth and twenty-first years. This charter fixed the relief of a baron at *one hundred marks*. For this confirmation a grant was made to the king of a fifteenth of the move-

* First Report, 84.

ables of the archbishops, bishops, abbots, priors, earls, barons, knight's freeholders, "*et omnes de regno.*"

In the twenty-sixth year of Henry, 1242, he summoned an assembly of the *commune concilium*, from whom he demanded an aid, which they refused to grant, and the meeting was dissolved by the king in great anger. From Mathew Paris, it appears, that this assembly consisted of the archbishop of York, the bishops of England, abbots and priors, all the earls, and *almost* all the barons of the kingdom.

A writ tested on the 13th May, 28 Henry III. commences thus:—"Sciatis quod *de communi concilio regni* "*nostri provisum est*, quod erimus apud Novum Castrum "super Tynam cum equis et armis," &c. This looks like a legislative enactment, but it refers to services beyond those due by tenure.

In the year 1246, according to Mathew Paris, "*rex* "*missis literis suis totius regni magnatis convocavit*," to meet in London in Lent, to treat of the state of the kingdom, and in speaking of this assembly, he says, "*Con-* "*venientibus igitur ad parliamentum memoratum totius* "*regni magnatibus.*" The word parliament, to describe a national assembly, was for the first time applied by any historian, but a writ mentioned in the thirty-third note to first Report, 28 Henry III. speaks of the *parliament of Runnimede*, "*Parliamentum Runnimeda*," which, however, had "no resemblance to a legislative body, but was "a meeting of two parties in arms for the purpose of con- "cluding a treaty of peace;" and the word *parliamentum*

was used in this writ in the meaning of *colloquium*, which was the original import of the word. Numerous writs are on the Irish patent rolls of licence, "*ad parliamentandum cum Hibernicis inimicis.*"

This assembly was composed of bishops, earls, barons, abbots, and priors. In it the grievances of the country from papal exactions were detailed, and three several letters were written to the pope; one from the bishops, another from the abbots and priors, and a third from the earls and barons, which last were all specially named in their letter, with those additional words, "*et "alii totius regni Angliæ barones, proceres, et magnates, "et* NOBILES PORTUUM MARIS *habitores* necnon et clerus "et populus universus.*" Those present in this assembly, must have considered themselves as answering for their tenants. The barons of the Cinque Ports are here denominated *nobiles.*† It is presumed, because they had noble or baronial jurisdiction in their liberties.

A writ issued 38 Henry III., the king being in Gascony, and the queen and the earl of Cornwall regents, entitled in the margin of the roll, "*de magnatibus vocatis "ad concilium*," is directed to the archbishop of Canterbury, and begins, "Cum quedam ardua et urgentia ne-"gotia statum nostrum et regni nostri tangentia, ha-"beamus vobis communicanda, *que sine consilio vestro, et "aliorum magnatum nostrorum, nolumus expediri* vobis "mandamus," &c. In this writ, the king exercised the

* Barons of the Cinque Ports.

† First Report, p. 91 and 95.

royal right to summons his barons to his assistance in council. Several similar writs were issued by Henry about this time. A remarkable writ issued 11th of February, in this same year, states, that the earls, barons, and other magnates, had engaged to repair to London in three weeks after Easter, with horses and arms, ready to proceed to Gascony. This writ was directed to the sheriff of Bedford and Bucks, and is tested by the regents; and the sheriff is directed to cause two lawful and discreet knights for each county, to be chosen by them, vice *omnium et singulorum eorundem*, to come before the king's council at Westminster, "ad providendum unacum militibus aliorum "comitatuum, quos ad eundem diem vocari fecimus, quale "auxilium nobis in tanta necessitate impendere voluerint. "Tu ipse militibus et aliis de comitatu predicto necessita- "tem nostram et tam urgens negotium nostrum diligenter "exponas, et ad competens auxilium nobis ad præsens im- "pendentium efficaciter inducas: ita quod prefati quatuor "milites prefato consilio nostro, ad predictum terminum "paschæ, respondere possint super predicto auxilio pro "singulis comitatuum predictorum."

This writ is the more remarkable, as it appears to have been the first attempt at representation, and giving consent to the imposition of an aid by elected deputies for the shires. The object of the writ was double, first, to obtain a commutation for services and a voluntary aid. But it "tends strongly to show that there then existed no law "by which a representation" was specially provided, for the constituting an assembly for granting an aid. Their lordships conclude, *the constitution of the government was to this period the same as it was in the reign of John*,

and that this substitution of two elected knights for each county was a *novel proceeding*. The administration of justice between individuals continued the same as hitherto. "But the weakness of Henry, his necessities, the dis- "tress of the country, and the power and ambition of in- "dividuals, began at this period to involve the king in "great difficulties, to urge him to arbitrary conduct, and "to lead to that opposition which produced a civil war, "annihilated the royal power, and led to the *gradual es- "tablishment of the system of legislation*, which even- "tually prevailed in England."*

We now approach, say their lordships, a period when "every thing prepared the minds of the people for *changes "in the government*," a revolutionary period of civil war and commotion. The king, a captive in the hands of a few of his powerful subjects, became an engine to forward their ambitious projects. The events of the remainder of Henry's reign would, in modern parlance, be denominated a period of revolution, which first imposed checks on the royal authority, and afterwards led to the new modelling the constitution, by the introduction of a deliberative legislative assembly, called *a parliament*. The events we have seen occur in France, Spain, Portugal and Naples, in our own times, are very similar, and the result has been the same in the three last, as far as the political dramas have proceeded. Free constitutions were established in these countries, which the respective monarchs have abrogated, and set aside by the restoration of the ancient absolute sovereignty. Henry, assisted by the

* First Report, see p. 97.

talents and bravery of his son Edward, regained his absolute power, but the *influence* of these commotions was not destroyed by the counter-revolution, and the turbulent and restless spirit of liberty which had been excited, although suppressed for a time, was not extinguished, but at length succeeded in establishing the rational and just system which has ever since been a model for the world.

It is probable, that in due time, the influence of the revolutions of Spain, Portugal, and Naples, will produce similar results. Whatever constitution arose out of the revolution in France *is new*, the most influential and powerful of the ancient French nobles, have been made *pairs de France,* and obtained a seat in the chamber of peers; many of the revolutionary nobles *of the empire* have also attained that dignity; but there are many of the ancient noblesse bearing the titles of duke, marquess, count, viscount, and baron, who have no pretensions to claim a seat. They are *nobles* but not *peers;* the present peerage of France is a *new institution*, and the sovereign, in selecting his materials, to constitute that body, chose some of the most influential and powerful, by property or talent, from the old nobles, but he left the great bulk of them where they were, as *noblesse de l'ancien regime.* So it was in the formation of the *new constitution* of the parliament of England; the cases are analogous in every respect. The earls and barons by tenure, were the *ancient nobles* of England; as tenants of the crown, they were bound to suite and service to the king in his court, and in his army, on certain occasions; they were the *nobles*, the *magnates*, and the *proceres* of the nation, but they possessed no authority beyond what the king had granted, and

have we any right to presume them possessed of more than the charters give? if we have not, then is their authority clearly defined. A new constitution arises out of a revolutionary period, and the king feels it expedient and necessary for his own safety, and his people's benefit, to establish a free legislature; he summons *all the earls, and the most influential of the barons by tenure,* to form part of his new chamber of peers, but he also calls thereto many individuals who were not *barons by tenure,* but had acquired great wealth and possessions by subinfeudation and purchase, and they became *peers* also, which proves that wealth and power were the qualities which induced the choice. In the new arrangement, the judicial power of the *curia,* or *aula regis,* could not be abolished, therefore, its powers were transferred to the newly-established house of peers—a transfer effected without difficulty, cavil, or objection, because there were very few affected by it, and those few having lost their power and influence by the diminution of their estates, although possessed of their baronies, or a part of them, yet would feel little desire to possess the expensive privilege of attending the parliament; and, if they did dislike the change, their discontent would be disregarded, if not supported by the power and influence of wealth. The transfer of the judicial power of the king's high court to the house of peers, made *all barons by tenure, liable* to fine and amerciament, if they did not attend when summoned to parliament, while persons who held by an inferior tenure, were not compellable at the sovereign will to become peers, and might and did with impunity refuse to attend; they were, however, fined, but on appeal the fine was remitted.

The king's necessities having led him to many oppressive and arbitrary acts, made him very unpopular, but induced him to call a meeting of the common council of the nation, which he summoned to meet at Oxford in the forty-second year of his reign, which, as observed by the Lords' Committees, was "the first assembly having attributed to it the appellation of *parliament*, in any authentic document, although some of the former assemblies of the same description are denominated parliaments by contemporary historians." This assembly assumed an authority and powers till then unknown in England, "operated a great revolution in the government, and finally produced a civil war, fatal for a time, to the king's authority, his army having been defeated in the battle of Lewis, himself taken prisoner, and compelled to accept such terms as transferred his authority to the hands of his victorious enemies, who kept him captive, and used his name against himself. This continued till the fifty-second year of his reign, when the battle of Evesham, in which the earl of Leicester, the great and ambitious leader of the barons, was slain, and the power of his associated barons annihilated."*

It is clear, that in this reign the king frequently summoned the magnates or nobles, for the purpose of counsel and advice, and sometimes required them to grant aids, but, on some occasions, those present in these assemblies, declared their incompetence to grant *for any but themselves*, and that they *could not* bind those absent—adding, that the utmost they could do, was to endeavour

* First Report, p. 99.

to prevail on the *comumnitas regni* to make such a grant.*

The meeting at Oxford, in June, 1256, is styled by the king, in the writ of safe conduct to the messengers of Llewellin, prince of Wales, *parliamentum nostrum*, but the king was then a prisoner in the hands of Leicester, and others of his barons, who had assembled a large military force, by whom he had been before compelled to transfer the royal power to a committee of twenty-four individuals, twelve to be named on his part, and twelve on the part of the barons (*"proceres,"*) who should meet him at Oxford; by this committee, "the *state of the king-*" *dom was to be ordained, rectified, and reformed.*"† In modern language was to receive *a new constitution*, or be revolutionized. There appears, however, very little of a popular feeling in the matter, as the twelve were to be appointed *by the barons*. This revolutionary committee were empowered to make any regulations they thought expedient, and the king promised to ratify whatever reformation or ordinance they should suggest.

The committee elected four persons to *nominate a council for the king*, which he confirmed by his writ. These four nominated fifteen others, nine of whom were of the twelve selected by the barons, which, being a majority enabled

* These circumstances point out the true distinction between a *magnum concilium* and a *commune concilium*; the former was a meeting of such as the king chose to summon, to avail himself of their *advice*, the latter an assembly *of all*, for the purpose of *granting him an aid*.

† First Report, 103.

them to act in the king's name, and in fact placed all the power of the kingdom in their hands. As the ordinances of this assembly do not appear on any authentic record, it is probable they were designedly destroyed, after the battle of Evesham had produced a counter-revolution; but historians relate, that the committee of twenty-four required the king to *confirm the great charter*, and to give to them the appointment of all the great offices of state, and of the keepers or governors of the king's castles. It was ordained, that the punishment of death should be inflicted on all who opposed their ordinances, and that *parliaments* should be held three specified times a year, on which the king's council, meaning the fifteen, should attend, (even if not summoned) to the common business of the nation. These *parliaments* were merely meetings of the *curia regis*, for the administration of justice, the legislative power was provided for by appointing twelve persons to treat with the king's council, for the *commons of the land*, on the common affairs and business of the nation.

"All the persons included under the words, '*tut le* "*commun de la terre*,' were to be represented in future "by twelve, '*prodes hommes*,' elected by the parliament "at Oxford, *the barons*, and *le commun* were to be bound "by what the twelve should do." "The twelve, it "seems, were appointed permanently, as there is no trace "of a future appointment, and yet *le commun* were to be "bound by what they should do, in every parliament at "which they should attend."*

* First Report, 106.

The whole proceedings on this occasion were those of a revolutionary body, not bound by precedent, but adopting such measures, as they thought best calculated to secure their success and cement their power. They assumed authority over the whole kingdom, and took, and compelled others to take, an oath of association, to maintain the authority they had assumed, calling themselves "*Le Commun de Engleterre*," an example followed, intentionally or not, is not important, by the revolutionists of Charles the First's reign, who assumed the title of "*The Commonwealth of England.*"

The chief justiciary, and the chancellor, were required also to take an oath, to do right to all persons according to the provisions made by the committee of twenty-four, the council of the king, and "*les hauz homes de la terre, "ke li jurrant eu cestes choses a aider et mentenir.*" The governors of the king's castles were also required to take an oath, which placed them under the control of the conventional government for twelve years, and four knights were appointed to each county, to examine into the conduct of sheriffs and other officers.

The king was compelled to assent to these revolutionary provisions, and his son Edward to swear to their observance, as were all others without exception. Thus, in the council of fifteen, and the twelve elected to represent the commons of the land, was vested not only the legislative, but the executive power of the realm.

The king afterwards absolutely abdicated his royal authority by a writ, tested the 10th of October, in his 42d

year—"It declares, that the king wills and grants, that "whatsoever his council, elected by him and the commons "of the kingdom, (*par le commun de nostre reaume*, as "expressed in the French language, and in English '*by "the landsfolk of our kingdom*,') or the majority of them "had done, or should do, for the honour of God, and the "fealty of the king, and for the profit of the kingdom, "should, as the council should ordain, be firm and estab- "lished in all things *for ever*, and he commanded and en- "joined all his subjects, to hold and swear to maintain the "same," &c. &c. These writs were sent to every county in England.

The provisions of Westminster in the 43d of Henry, although in the name of the king, were of the same revolutionary character. By the record, the statute appears to have been made "*Convenientibus apud Westm. "in quindena Sancta Michaelis ipso Domini rege et mag- "natibus suis, de communi consilio et consensu dictorum "regis et magnatum*," and has the apparent character of a regular and settled government. "But these same pro- "visions are inserted in substance, in the annals of Bur- "ton, under the title of *provisiones baronum*," concluding thus—"Ces sunt les purveances et les etablissi- "menz fetz a Wesmoster, al parlement a la Sant Michel, "par le rei et sun conseil, et les xii. par le commun con- "seil esluz par devant le communance de Engleterre, ke "dunke fu a Westminster le an del regne Henri, le fitz le "rei Johan, quarantime terz."*

* First Report, 131.

This parliament was held at Michaelmas, and, therefore, was not one of the three regular parliaments, or king's courts, required to be assembled three times a-year by the provisions of Oxford, which were the parliaments for judicial purposes; this was specially summoned for general purposes.

In the 45th year of his reign the king made a general appeal to his people, and appointed a meeting at Windsor, which the earl of Leicester and his adherents endeavoured to counteract, by appointing an assembly to be held in opposition to the king, on the very same day at St. Albans. They summoned *three knights* from each shire to attend this meeting, to be, (as is stated in the king's writ, prohibiting the meeting) "*coram ipsis*, apud Sanc-
"tum Albanum, secum tractaturi super communibus ne-
"gotiis regni nostri, et nos et predicti proceres nostri in
"eundem diem apud Windsore conveniremus ad tractan-
"dum de pace inter nos et ipsos." The writ proceeds,
"Tibi precipimus quod illis militibus de balliva tua, *qui*
"*vocati sunt coram eis ad diem predictum, firmiter in-*
"*jungas ex parte nostra, ut ad nos die predicta venient*
"*apud Windesor;* et eis etiam distincte inhibeas ne dicto
"die alibi quam ad nos accedant, set eos modis omnibus
"venire facias coram nobis ad diem predictum, nobiscum
"super premissis *colloquium* habituros; ut ipsi per effectum
"operis videant et intelligant, quod nichil attemptare
"proponimus nisi quod honori et communi utilitati regni
"nostra noverimus convenire."

This act of the earl of Leicester, and his adherents, was a step farther in their revolutionary career; they called

three knights as representatives for each shire, to *treat with them*, in opposition to the king, who had summoned the lawful *communе concilium*, or *parliament*, as it became now to be called, at Windsor, undoubtedly with a view to supersede the king's authority altogether, and to ulterior proceedings. This appears to have been one of those extraordinary measures which arise out of circumstances in revolutionary times, and was probably the first suggestion of, and led to the establishment of a representative legislative assembly in England.

It appears, however, that this meeting at St. Albans, did not take place. The contentions between the king and the barons were settled by a temporary arrangement, and he granted a general pardon to all those who had already, or should, within a certain time, affix their seal to a certain instrument to that effect. The earls of Leicester, Marshal, Warren, Roger de Mortimer, Hugh le Despenser, William Bardolf, John de Burg, Henry de Hastings, John Fitz-John, Robert de Vespont, William de Munchensy, John Fitzallyn, Nicholas de Segrave, and Geoffery de Lucy, were among those who *had not signed.*

The king by a proclamation tested at Westminster, 2d May, in the 46th of his reign, declared his resolution no longer to submit to the provisions of Oxford, which he denounced as being to the *prejudice of himself and the royal authority*, and to the injury of his subjects; that he had been absolved by popes Alexander and Urban, from the obligation of the oaths he had taken to observe those provisions; *but that all the liberties of the great charters should be observed.* In all these instruments the

king styles the persons composing the meeting at Oxford his *barons*.

After this attempt of the king to disenthral himself from the domination of the barons, it was agreed to refer their differences to the decision of the king of France, who made an award to restore the king to the state of power he possessed *previous to the provisions of Oxford*, but confirming *all the charters*.

"On this award of the king of France, it is observable, "*that there is not contained in it*, or in the instruments "of submission recited in the preamble, *mention of any* "*legislative assembly of the country*, or of any description "of persons engaged in contest with the king, besides "*barons*, except the words, '*alii quicumque præsenti* "*compromisso consenserunt*,' used in one clause. It "seems, therefore, scarcely possible, that the legislative "assembly convened at Oxford, should have consisted of "any persons, except such as might have been comprised "under the *general denomination of barons*."*

The award of the king of France, was not acceded to by the barons. Many offers of compromise having been made, and rejected, on both sides, an appeal was again made to the sword, and, in the month of April, a battle was fought at Northampton, in which the king's party, commanded by prince Edward, were successful; but, in May following, the king was defeated, and himself and his brother Richard taken prisoners in the battle of Lewes,

* First Report, 137.

in Sussex. Prince Edward was compelled, by this misfortune, to treat with Leicester and the victorious barons, and with his cousin Henry, to become hostages in their hands till all things should be *settled by the authority of parliament.* This treaty concluded on the field of battle, was called the "*Mise of Lewes,*" was acceded to by the king, and appears to have been the first appeal to the *decision of a parliament.* A parliament met in London in June following, and consisted apparently of knights elected for the several shires, as well as of persons summoned by special writs, *but not of representatives of cities and boroughs.*

Leicester and his adherents now assumed sovereign power, and proclaimed the peace which had been made in all parts of the kingdom, and ordained, in the king's name, with the advice and assent of the barons, that no one should bear arms, without the king's license, on pain of life and limb. Other writs were issued, appointing keepers of the peace, in twenty-nine counties, until "*by "us and our barons the state of our kingdom be regulated.*" And each county was directed to elect *four knights*, and send them to the parliament to be held in London, to be there, at latest, on the octaves of the Holy Trinity.

"To give consistency to the language of these writs, "the knights thus elected, must have been considered as "*representing such barons as were not personally sum-*"*moned*, as appearing for the community of barons of "each county."*

* First Report, 138.

Nine counties are not mentioned in these writs, nor does it appear that writs were directed to any of them, nor is mention made of any cities or boroughs.

A parliament met in London about the feast of St. John the Baptist, 24th June, 48 Henry III. in which a treaty of peace was made between the king and his son Edward on one part, and the prelates and proceres, and all the community of the kingdom on the other. "Ad reforma-
"tionem status regni Angliæ eligantur et nominentur *tres*
"discreti et fideles de regno, qui habeant authoritatem et
"potestatem a domino rege eligendi seu nominandi, *vice*
"*domini regis*, consiliarios novem; de quibus novem tres,
"ad minus, alternatim seu vicissim semper sint in curia
"præsentes."*

"It is then provided that the king, *by the advice of*
"*these nine persons*, should dispose of all the business of
"the kingdom, appoint the justiciary, chancellor, trea-
"surer, *and all other officers both great and small*, &c.
"and these nine were removeable, and others to be ap-
"pointed by the advice of the three, by whom the first
"nomination should be made;" and in case of disagree-ment, the decision was to be of two-thirds of the two bodies of three and nine, eventually leaving the decision to the *three*.

On the 23d of June, in the forty-eighth year of Henry, a writ issued in the king's name, appointing the bishop of Chichester, and the earls of Leicester and Gloucester,

* First Report, 139.

to *name the nine*, by whose advice the kingdom was to be governed, which put the whole power of the kingdom into the hands of the earl of Leicester, who was *the only person authorised by king's license to proceed with horses and arms.*

Under these circumstances, was assembled the parliament of the 49th of Henry the Third, the writs for summoning which, are still considered the earliest on record, for *summoning a parliament.* The first writ on the roll was tested at Worcester, 14th Dec. 49 Henry III. directed to the bishop of Durham. It recited, "that "prince Edward had been delivered as a hostage, '*pro* "*pace in regno assecuranda et firmanda*,' and that it "became necessary that the king should have conference "with, and the advice of the bishop, '*et aliorum prela-* "*torum et magnatum nostrorum*,' and commanded the "bishop to be at London in the octaves of St. Hilary, "'nobiscum et cum predictis prælatis et magnatibus nos- "tris quos ibidem vocari fecimus super premissis tracta- "turi et concilium vestrum impensuri,'" &c. Writs were also issued to the archbishop of York, the dean of York, the bishop of London, and some other bishops, the bishop elect of Bath and Wells, *the deans* of Exeter, Wells, Sarum, and Lincoln, to several abbots and priors, the earls of Leicester, Gloucester, Norfolk, Oxford, and Derby, and to Ralph de Camoys, and seventeen other laymen.

"To the entries on the record, concerning these writs, "are added the following:—Item mandatum est singulis "vicecomitibus per Angliam quod venire faciant *duos mi-*

" *litis* de legalioribus proborioribus et discretioribus militi-
" bus singulorum comitatuum ad regem London in octabis
" predictis in forma supradicta."

" Item in forma predicta scribetur civibus Ebor. civibus
" Lincoln, et ceteris burgis Angliæ, quod mittant in forma
" predicta duo de discretioribus legalioribus et proboriori-
" bus, tam civibus quam burgenibus suis."

" Item in forma predicta mandatum est baronibus et
" probis hominibus Quintorum Portuum prout continetur
" in brevi irrotulato inferius."

" Rex baronibus et ballivis portus sui de Sandwico sa-
" lutem. Cum prelatos, magnates, et nobiles regni nostri
" tam pro negotio liberationis Edwardi primogeniti nostri
" quam pro aliis communitatem regni nostri tangentibus,
" ad instans parliamentum nostrum quod erit London in
" Octabis Sancti Hillarii convocarii fecerimus, ubi vestra
" sicut et aliorum fidelium nostrorum presentia plurimum
" indegimus, vobis mandamus, in fide et dilectione, quibus
" nobis tenimini, firmiter injungentes, quod, omnibus aliis
" pretermissis, mittatis ad nos ibidem, *quatuor* de legaliori-
" bus et discretioribus portus vestri, ita quod sint ibi in
" octabis predictis, nobiscum et cum prelatis et magnatibus
" regni tractaturi et super premissis auxilium impensuri,
" &c. Similiter mandatum est singulis portubus per se."

A writ is also directed to the sheriff of Yorkshire, to levy the expenses for the knights of that county, and in this writ the knights of the shires are stated to have been summoned, " *tractandum nobiscum et cum* CONCILIO

NOSTRO," while representatives of the *Cinque Ports* were required to confer, "*cum prelatis et magnatibus regni.*" From the small number of the individuals summoned they may have been considered the same body. Many more of the prelates and nobles of the kingdom were omitted than summoned, this assembly being a mere packed meeting of the king's enemies, having him a prisoner in their hands: none of the king's friends were summoned, but many were ordered to attend as criminals.

The laymen summoned to this parliament were twenty-three, all of the earl of Leicester's party, that of the ecclesiastics one hundred and twenty-two, including *deans*, abbots, and priors, whose successors were not summoned to parliament; it was "evidently a *party measure*," not summoned upon any principle, but that of performing the will and accomplishing the designs of the dominant party. The knights representing the counties were, of course, elected by the influence of the conservators of the peace, appointed by the earl of Leicester: in short, the whole appears to have been a revolutionary proceeding, unknown to the law, and one of the expedients resorted to by the earl of Leicester to confirm and establish his power.

An agreement was made in this parliament, for the liberation of the princes Edward and Henry, the hostages delivered to Leicester, until the peace of the kingdom should be established, which recites, that in order that the ordinance made at London in June, in the forty-eighth year of the king, under the title of "*Forma regiminis domini regis et regni*," might be better kept, the king was to command, and the prince to require the "*hauz*

hommes e les commun de la terre," of every county by their letters patent to that effect. And that neither the earl of Leicester, nor any of his adherents, should be aggrieved or molested, for any act done during the time of war; and if the king or prince did aggrieve the earl or his friends, by reason of those things, the "*hauz hommes et les commun de la terre,*" should be at liberty to act against them, and molest them to their utmost; should obey them in nothing, until those things were remedied and redressed, according to the ordinance above mentioned; and an oath was to be taken by the king and prince, and the *hauz hommes e les commun de la terre,* that if any one should aid the king, or prince, or any other, against the provisions of that ordinance, *he should be attainted and disinherited as in case of felony.*

It was also provided, that the prince should exchange with the earl of Leicester, his county, castles, and towns of Chester, Newcastle-under-Lyne, and the castle of the Peak, for other lands; and deliver the castle and city of Bristol until this exchange should be completed, and many other extraordinary conditions. To this document the king, the princes Edward and Henry, ten bishops, the prior of St. John of Jerusalem, the master of the templars, and the mayor and commonalty of London, put their seals.

A writ of the 10th of March, 49 Henry III. acknowledges the release of prince Edward, and his cousin Henry, and the writs were issued in their names, commanding obedience to the ordinance; this release was, however, but nominal, the prince was still retained pri-

soner, carried about with the king, and not suffered to go any where without a military guard.

"It is remarkable, that scarcely mention of any par-
" liament in this important year, of the 49th of Henry,
" is to be found in any contemporary historian."

From what Wikes, the historian, who is supposed to have written in the reign of Edward the First, states, there is reason to believe, that the earl of Leicester meditated ulterior objects for his own personal aggrandizement, which led him to adopt measures to suppress the power even of those *hauz hommes* who had joined himself, and to prevent their doing any thing against him, he resolved—"*Majores deprimere et eorum potentias an-*
" *nihilare, confringendo cornua superborum; ut exinanitis*
" *majorum viribus, liberius et facilius vulgares sibi po-*
" *pulos subjugaret,*" a policy attributed to the earl by subsequent historians, and supposed by them to have been "*his motive for calling to this parliament the represen-*
" *tatives of* counties, cities, boroughs, and cinque ports." He imprisoned the earl Ferrers, on a criminal charge, and meditating a similar violence against the earl of Gloucester, that nobleman, with John Giffard, and others, fled to the Marches of Wales. Leicester, also compelled the king to deliver to him the castles of Dover, Scarborough, Bamborough, Nottingham, and Corfe, as security for the preservation of the peace, and the castle of Montgomery was delivered to John L'Estrange, one of his adherents.

Prince Edward found means, at last, to escape from his military guard, and fled to the lords Marchers of Wales,

the earl of Gloucester, shortly after, joined him with a considerable force, and was followed by earl Warren, William de Valence, Hugh Bigot, John Giffard, and others, whose forces together formed a considerable army. These individuals are styled in a writ of the 30th of May, of 49 Henry III. as rebels, and to have forfeited their dignities by their adherence to the king, and writs were sent to the *keepers of the peace* of the several counties, (clearly showing that the authority of the sheriffs was still suspended) stating, that the earl of Gloucester had joined the prince and the lords Marchers, and commanding the keepers of the peace to summon all persons to attend at Worcester, with horse and arms. These writs are tested by the earl of Leicester, *as justiciary*, and three members of the council of nine, "*vice domini regis.*"

"These proceedings led to the battle of Evesham, on "the 4th of August following, in which the earl of Lei-"cester was defeated and slain, and the king, being li-"berated, in a patent, tested at Worcester on the 7th of "August, announced the recovery of *his full royal power*, "and that during his captivity, the earl of Leicester had "used his name and authority against his will."

The foregoing narrative must relate to a period of *revolutionary struggle* between the king and his barons, and the reader cannot fail to observe the resemblance which it bears to the scenes which passed in the reigns of Charles the First, and James the Second, and in our own times in France, which, before the revolution, was very similarly circumstanced to England

in the time of Henry. The king was absolute, but it was necessary that the parliament should register his decrees—there was a privileged nobility possessing feudal rights and authority, but there was no free constitution, and the exercise of power depended on the personal character of the king, and his chosen advisers.—There was no legislative assembly, and the struggle between the sovereign and the people, ended, after various vicissitudes, in the establishment of a constitution ALTOGETHER NEW. So it was in England, during the period from John to Edward the Second; the king was absolute, with the exception of those privileges of which he had divested himself by the charters of liberties; and, in the rights granted by those charters, no concession of the legislative power *to the people* was included, except that of *consenting to the imposition of taxes*, and the whole tenor of the records and history afford no evidence of the exercise of any other legislative power in the common council. The assemblies held previously to the forty-ninth year of Henry the Third, even those called parliaments, were composed solely of the barons or chief tenants of the crown. The struggle between Henry and his barons, ended in a restoration of the king's ancient authority, and the total destruction of the fabric erected by Leicester.*

The forty-ninth of Henry was, however, the commencement of an important era in England, for in that year was summoned the first assembly considered a parliament, of

* Charles X. has recently made an attempt to restore the ancient absolute authority in France.

which the writs remain on record, and in which writs were, *for the first time*, directed to the counties, cities, and boroughs, to send representatives, in the form in which parliaments were afterwards summoned. It was, although but a revolutionary proceeding, and an assembly of the earl of Leicester's adherents, the king, and his eldest son Edward, being then in their power, very important in its consequences, as it became the model of the future parliaments of England; and peers now sit in the house of lords, in consequence of writs summoning their ancestors to this assembly, although but a revolutionary convention, and provisional assembly, unknown to the laws and constitution of the time.

The account here given, relates to a tempestuous period of civil war and discord; the king had been a prisoner, under the control of the earl of Leicester, for seven years, from the forty-second to the forty-ninth year of his reign, in which that powerful individual adopted such revolutionary expedients, as he conceived best suited his views, to secure his power. But the assemblies held by him, in the king's name, during this period, cannot be considered as precedents on which any dependance can be placed, to found an argument, that legislative assemblies then, and theretofore, had existed on an established and settled principle of law.

"The king, immediately after the battle of Evesham, "assembled his faithful magnates at Winchester, who "proceeded vigorously to confiscate the estates of Leicester "and his adherents, as rebels, and two knights were ap- "pointed in each county to carry their decrees into effect.

"The assembly at Winchester, although *called a parlia-*
"*ment*, appears to have been convened without formali-
"ties: the writs reciting its acts, are tested on the 21st
"of September, only forty-eight days after the battle,
"and only five after the proclamation of the king's
"peace." "The *writs, therefore, for the convention of*
"*this assembly, if any such writs were issued, must have*
"*issued long before the proclamation of the king's peace,*
"*and, therefore, in time of war.*"*

Is it likely that any writs were issued for this assembly? the assumption, that there were any settled principles of constitutional law at the period, alone would lead to such a conclusion. The natural effect, where a beaten party had recovered its power, was reaction; it was, therefore, but another act of the revolutionary drama. All the assemblies held down to this period, which bear any resemblance to constitutional legislative bodies, were but the results of revolutionary movements—not the offspring of legal authority, but of military force. The king had always possessed the right, if not the exercise, of the power of legislation; the assemblies during his captivity, were the result of exertions made to deprive him of this power. The *parliament* of Winchester, which proscribed the adherents of Leicester, consisted of the king's friends and his council, who had recovered the sword of the ascendant.

The annals of Waverley state, that, in a parliament at Kenilworth, in 1266, the *king confirmed to his barons*

* First Report, 156.

the ancient charters, and "according to this relation, "neither the assembly at Kenilworth, nor the subsequent "one at Northampton, *was composed of any persons but "prelates, earls, and barons.*" King Henry, restored to his power, evidently considered all the assemblies and meetings held by Leicester, as rebellions against his lawful authority, and, therefore, abrogated them—in other words, he restored the constitution of the *ancient charters*, which gave his barons, or tenants, the right of consenting to the imposition of taxes, but no other legislative power. The lay part of the assembly, in which the statutes of Marlborough are supposed to have been enacted, consisted of earls and barons only; but these ancient statutes cannot justly be considered acts of parliament, but ordinances of the king.

Is it too much to assume, from the evidence which has been adduced, that, to the death of Henry the Third, 1272, there was in England no legislative assembly established by an acknowledged law, except the king and his council, that is, those he chose to consult? The parliaments held by Leicester, must be considered unlawful innovations and usurpations of the king's authority, and like the parliaments of Cromwell, in a legal point of view, nullities. If this point be conceded, no persons before this period can be considered lords of parliament; because peers, considered as members of the upper house, cannot take date previous to the legal establishments of parliaments, consisting of lords spiritual and temporal and of the commons, and there had heretofore been no such assembly in England, they had been all revolutionary conventions.

CHAPTER V.

EDWARD I.

On the 16th of November 1272, Henry the Third died. Edward succeeded, but he was absent in the Holy Land. On the 22d of the same month, a letter was addressed to him, in the names of the archbishop of Canterbury and the earls of Cornwall and Gloucester, announcing his father's death, and his accession and proclamation, urging his immediate return. Edward arrived in England in July, 1274, in the second year of his reign, was crowned in the following month, and held a parliament at Westminster in the Easter following. No writs of summons to this parliament appear on record, for as it was the usual period of meeting for the parliament, or king's court, no writs were probably issued, or necessary, but the title to the statutes then made in the authorised collection is, " Ces sont *les establisementz le rey Ed-*
" *ward, fitz le rey Henry, fetz a Weymoster*, a son pre-
" mier parlement apres son courounement apres la cluse
" paske, lan de son regne tierz, *par son conseil*, e
" par le assentement des erceveskes, eveskes, abbes, priurs

" contes, barons, et la communaute de la terre, ileokes " somons."

" From statutes or ordinances, inserted in the authorised " collection, it must be inferred that parliaments were " holden in 4th, 6th, 7th, 9th, 11th, 12th, 13th, 16th, 20th " and 21st of Edward the First, in which those statutes " or ordinances appear to have been made, though no " writs of summons, or writs for the election of knights, " citizens, or burgesses, for those parliaments, appear on " record, except for the election of *two, or three,* knights " for each county, issued in the 18th of Edward I."*

There are also writs of 22 Edward I. for the election of *two* knights for each shire, to be at Westminster on the morrow of St. Martin, and subsequent writs direct *two more* knights for each county, to attend with the knights elected under the former writs.

The *statute de viris religiosis,* of the 7th of Edward I. appears on the great *statute* roll in the Tower, but only in the *form of a writ* addressed *by the king* to his justices of the bench. The enacting authority is thus given—" Nos " de consilio prelatorum, comitum, et aliorum fidelium " regni nostri, *de consilio nostro existentium, providimus,* " *statuimus, et ordinavimus,*" &c. " This writ, therefore, " states a legislative act *by the king, by the advice of such* " *prelates, earls, and others, as were of his council.*"— But it was *registered* by the ordinary parliament, or the king's high court of justice. The annals of Waverley

* First Report, 180.

speak of this statute as made in 1280, and describe it, "*rex* de consilio *quorundam* pontificum et baronum sta- "tuit," which accord with the words of the statute itself, which has always been acknowledged as a statute of the realm.

For the repression of Llewellyn, prince of Wales, the king, in the year 1283, issued writs to the several sheriffs of the counties, south of Trent, directing them to cause to attend the king at Northampton, all those who possessed £20 of land, able and fit to bear arms, and *four* knights for each county, having full power, and for every city, borough, and *market town*, two men, *having like power*, for the communities of the same, to hear and do those things which, to them, on the king's part should be shown. And the sheriff was commanded not to excuse the attendance of any, having £20 of land, or to force any to attend, not having so much land, however rich he might otherwise be. The archbishop of Canterbury was directed by precept, to summon his suffragans, abbots, priors, and chiefs of religious houses, and the procurators of the deans and chapters of collegiate churches, to attend at *Northampton*. And the archbishop of York, to summon a like meeting *at York*, and shortly after the king sent letters tested at Rothelan, to the bishops, &c. of the province of York, and to the knights, freeholders, communities, and others, north of Trent, to attend the assembly *at York*, to meet there on octaves of St. Hilary, stating that he had given power to the archbishop of York, and Anthony Bek, to ask, in his name, a subsidy from his subjects north of Trent.

After the defeat and death of Llewellyn, the king issued writs, dated at Rothelan, the 28th of June, in the eleventh year of his reign, to the earl of Lancaster, nine other earls, and *ninety-nine* other persons, to attend him at Shrewsbury. A writ issued also to the mayor and citizens of London—"Quod duos de sapientoribus et ap-"tioribus civibus predictæ civitatis eligi faciatis, et eos ad "nos mittatis, ita quod sint apud Salopiam in crastino "S. Mich. proximo futuro nobiscum super hoc et aliis "locuturi."

Similar writs were sent to the mayors, &c. of Winton, Newcastle-on-Tyne, York, Bristol, Exeter, Lincoln, Canterbury, Carlisle, Norwich, Northampton, Hereford, Chester, and Worcester, and the bailiffs, &c. of Nottingham, Scarborough, Grimsby, Lynn, Colchester, Yarmouth, and Shrewsbury.

Writs were also directed to the sheriffs of the counties, to choose two knights.

"If this assembly was also to act as a legislative body, "as it seems to have done, it would follow from the con-"stitution of this convention, as well as from the two con-"ventions at Northampton and York, in the preceding "year, *that the constitution of a legislative assembly in* "*parliament, and the mode of its formation, were not* "*then settled by law.*"*

"It does not appear that *any prelates* were summoned

* First Report, 190.

" to this assembly. The persons summoned by writ were " *ninety-nine*, and of these *above sixty* were not sum- " moned to the parliament in the 23d of Edward I. nor " were any of the same name. This seems to demon- " strate, that Edward *assumed a discretionary power in* " *issuing special writs of summons to this assembly*, as " well as to the cities and boroughs."

" Wikes, the historian, speaking of this parliament, as " before stated, says that the king convoked at Shrews- " bury, 'majores regni et sapientiores tam de *civibus* quam " de *magnatibus*.' He cannot be supposed to have in- " tended to include the knights of the shires, under the " description of *cives*, he must, therefore, have considered " them *magnates*."*

The statute *de Mercatoribus*, commonly called the statute of *Acton Burnell*, is entered on the great roll of the proceedings of this parliament. The enacting words are— " *Le rei par lui e par sun conseil ad ordine e estabti*," &c. and it concludes, " *donee a Actone Burnell le duzin jor* " *de October en l'an de nostre regne unzime*," &c. If this has any meaning, it is that the statute was the act of the *king and council, not of the parliament*, which evidently acted merely ministerially, and registered the king's ordinance, as the king's high court. To account for this statute bearing the name of *Acton Burnell*, many *guesses* have been made—some say, that the *house of lords* met at *Shrewsbury*, and *the commons* at *Acton Burnell;* others assert, that both houses sat at Acton Burnell, the lords *in*

* First Report, 191.

the castle, and the commons in *a barn.* The summons directs the parliament to meet *at Shrewsbury,* and the historian adds, it met there "*tam civibus quam magnatibus,*" evidently implying and proving, that both lords and commons *met at Shrewsbury,* and not at Acton Burnell. There was, however, the most substantial reason for the name the statute has always borne, which was, that Acton Burnell was the *place of its enactment.* The king resided in the castle of Acton Burnell, during the period of the sitting of this parliament at Shrewsbury, and from thence issued the ordinance, as appears from the teste. There are several acts of the king tested at Acton Burnell in October, 11th Edward II. three in the new edition of the Feodera, one dated the 13th, the day after the teste of the statute, and two on the 20th of that month, and others are on the patent and close rolls, in the Tower. The statute of the 13th Edward I. also states, that this statute was "*fet a Actun Burnel,*" and calls it the king's statute, "*sun statut.*" The carelessness with which assertions are made by historians, is very remarkable; even the learned and accurate Camden states, that the parliament was held at Acton Burnell; and others go so far as to enter into particulars, and place the commons in a barn, and not a few use it as conclusive evidence, that a separate *house of commons* then existed, when, in fact, no parliament met there. It may be well said that no small portion of what we have been in the habit of calling history is romance.

"In the authorised collection, the statutes of the 13th
"of Edward I. have this title, 'Statuta regis Edwardi
"edita apud Westmonast. in parliamento suo Pasch. anno

" regni sui 13°." They begin, " cum nuper dns. rex in 15°
" Sci. John Baptistæ, anno regni sui sexti, convocatis
" *prelatis comitibus, baronibus, et consilio suo, apud*
" *Glouc.*'"

" The statute of Winchester (also on the great statute
" roll) speaks only *in the king's name* throughout, without
" mention of prelates, earls, and barons, or council, and
" all the provisions, according to the language of the
" statute, *emanated from the king's authority;* and in one
" part he requires the justices to be assigned, as directed
" by the statute, to represent to him in every parliament,
" such defaults as they should find, adding, that *the king*
" *thereupon shall provide a remedy.*" " The statute im-
" poses severe penalties," " *it can, therefore, be scarcely*
" *deemed a statute which did not require the sanction of*
" *the general legislative body of the realm.*"*

The statute of merchants of the 13th Edward I. states complaints of the merchants of delay in the execution of the statute of Acton Burnell, adding, " Le rey, a sun
" parlement a Westm^r apre Pask, l'an de sun regne troizime
" fist reciter l'avaunt dit statut *fet a Acton Burnel;* e pur
" declarer aquns articles de *sun statut* avauntdit, ad ordine
" e establi," &c. and concludes, " Cest ordeinement e es-
" tablisement veut le rey qe desoremes seit tenu par tut
" son reaume de Engleterre *et de Irlaunde*," &c.

The statutes for the city of London, appear to be *ordinances of the king only*, also concluding with an injunction

* First Report, 193.

from the king for their enforcement :—" On the close roll " of this year, stating that divers prelates, earls, and " barons, and others, prayed the king in his parliament at " Westminster after Easter, that he would *confirm the* " *charters of his progenitors, or ancestors, kings of* " *England,* granted to the ancestors of those persons, " whereupon the king '*super hoc cum consilio suo trac-* " *tatu,' &c.*"*

All these proceedings appear to have taken place in the king's ordinary parliament, and these statutes, and all other laws, hitherto made, were from the authority of the king and his council only, as is still the case for that part of the duchy of Normandy, now under English dominion, Jersey, Guernsey, &c. This evidence appears irresistible to establish the fact, that all laws, but those imposing a tax or a service, were made by the king and recorded in the records of his *high court of parliament*, which was no farther a legislative body, than as the usual place where the king registered and promulgated his decrees and ordinances.

Wikes mentions an assembly, summoned to meet in London in 1288, when the king was in France, where he had been three years, in which the bishop of Ely, the treasurer, in the king's name, desired a subsidy, " *a comi-* " *tibus et baronibus imo et generaliter ab universis incolis* " *regni.*" To which the earl of Gloucester, for the rest, answered that they would give nothing till they saw the king in England. The historian adds, that the treasurer

* First Report, 193.

finding he could obtain no money from the assembly, imposed a heavy and intolerable talliage on the cities and boroughs, which were of the king's demesnes.

The conclusion of the Lords Committees on these documents and evidence, of the state of things to this period, is as follows:—

"From all the documents, therefore, applicable to the "early part of the reign of Edward the First, it cannot "be collected that the precedent of the 49th of Henry III. "was clearly adopted in any instance, and that when "proceedings to obtain a representative body did take "place, *they were different from that precedent*, which "they, therefore, did not acknowledge as established by "law."*

Great discontent seems to have prevailed during the king's absence in France, and the king issued writs forbidding the nobles to appear, "*cum equis et armis, seu alio modo in manu armata,*" but to submit to such remedy as the king's council should provide.

Edward returned to England in 1289. The next statute appearing on the roll is the important one, "*Quia emptores terrarum,*" or of Westminster the third, which reciting the inconveniences from grants of lands, to hold of the feoffor, and not of the chief lord of the fee, *the king*, in his parliament after Easter in his eighteenth year, *at the instance "magnatum regni sui,"* granted, provided,

* First Report, 195.

and ordained that from thenceforth it should be lawful for every freeholder to sell all or any part of their lands or tenements at his will, but that the purchaser should hold of the chief lord, by the same service as the feoffor held.

The statute of *Quo Warranto* of the same year, states that the king, "of *his special grace, and for the affection* "*he bore to his prelates, earls, and barons,*" and others, had granted the provisions of the statute.

The statute *de Consultatione*, of the same parliament is expressed, "*the king wills and commands.*"

Their lordships observe, "It is a singular circumstance, "that although there *have not been found* on record, any "trace of special writs of summons to this parliament, "directed to prelates or others, yet an entry appears on "the close roll of this year of a writ directed to the she- "riff of Northumberland, as follows:—'Cum per comites, "barones, et *quosdam alios* de proceribus regni nostri, "nuper fuissemus super quibusdam specialiter requisiti, "super quibus, tam cum ipsis quam cum aliis de comita- "tibus regni nostri illius, colloquium habere volumus et "tractatum, tibi precipimus quod *duo vel tres*, de discre- "tioribus et ad laborandem potentioribus militibus de "comitatu predicto sine dilatione eligi, et eos ad nos usque "Westm. venire facias, ita quod sint ibidem a die Sancti "Johannis Baptiste proximo futuro in tres septimanas "ad ultimum, cum plena potestate pro se et tota commu- "nitate comitatus predicti ad consulendum et consen- "tiendum pro se et communitate illa hiis que comites,

" barones, et proceres predicti tunc duxerunt concordand.'
" The writ is tested at Westminster 14th June, and
" similar writs were sent to all the other sheriffs of Eng-
" land." *

The statute of *Quia emptores terrarum*, appears to have been made in a parliament at Westminster in the quinzeme of John the Baptist, the day to which the parliament appears, by other proceedings, to have been adjourned, but *seven days before the writs* above mentioned were returnable. The parliament must, therefore, have assembled *before the knights of the shires could have been returned.* The act itself says, " *Dominus rex, in parliamento suo,* " *ad instantiam magnatum regni sui, concessit, providit, et* " *statuit,*" &c.

These knights were evidently not summoned for general legislative purposes, but for some special matter connected with a grant of money or service, and the assembly to which they were summoned was the king's *ordinary court of parliament,* which accounts for there being no special writs issued. The discretion also left to the counties to elect *two* or *three,* demonstrates that *their consent* was all that was necessary to legalize the measure contemplated, and that they were not intended to form a legislative assembly. It moreover appears, that the proceedings in this parliament were merely suits and pleas in parliament.

" On the whole of the evidence collected by the Com-

* First Report, 196.

" mittee on the subject," " there seems strong grounds for " presuming that after the 49th of Henry III. *the consti-* " *tution of the legislative assemblies returned generally to* " *its old course.*"*

Should it not be rather said, that the *ancient constitution* of the country returned to its old course? for in the absence of evidence conclusive of the pre-existence of any *legislative assembly* to the 49th of Henry III. that can scarcely be considered a legislative assembly, whose functions were confined to the granting an aid, though it may have been the means of obtaining an enlargement of liberties as the price of a grant of money, and so far have *influenced legislation.*

Edward had experienced the effects of the influence of the great men assembled at Oxford, and more recently the resistance of the earl of Gloucester to his demand of an aid; and recollecting his father's example, of appealing to the people, when oppressed by the confederacy of the great barons, the cities and boroughs having also become rich and powerful, it was likely that these considerations would induce him to adopt the policy of Leicester, and endeavour to form an assembly, composed in such a manner, and of such materials, as would balance the power of the great men, and lead to the measure adopted in the twenty-third year of his reign, of summoning representatives, not only of all the shires, but also for a great number of cities and boroughs.

* First Report, 202.

A great convention was assembled at Norham, 10th May, 1291, of prelates, earls, barons, knights, and many others, in which the question of the right of succession to the crown of Scotland, was submitted to the king's judgment. The king demanded of the *proceres*, *magnates*, *et nobiles*, *de utroque regno*, by what laws and customs he ought to proceed to judgment? and also, in a particular case, where none certain could be found, or those of the two countries varied, whether the decision as to the kingdom was to be different from earldoms, baronies, and other tenures? To which was answered, "*That he ought* "*to judge by the laws and customs of the kingdom over* "*which he reigned, if certain laws* and customs should be "found in the case, but if certain laws and customs should "not be found, that the king '*de consilio procerum et* "*magnatum suorum* POTEST ET DEBET CONDERE NOVEM "LEGEM,' and that the right to the succession of the "crown of Scotland was to be decided, '*sicut comitatibus* "*baronibus et aliis tenuris impartibilibus*,'"* an answer which seems to import, that laws were to be made *by the king with the advice of his council.*

"On the morrow of the epiphany, in the twentieth year "of his reign, the king held a parliament at London, in "which the statute '*de presentibus vocatis ad warrantum*,' "in which the words of the enactment import, that *the* "*king* '*de communi consilio statuit et firmiter de cetero*, "*videlicet de festo Sci. Hilarii, anno regni sui vicessimo*, "*precepit observari*," and similar language is used in the "statutes of the same year, and in the statutes of 21

* First Report, 206.

" Edward I. words to the same effect are used, or import-
" ing that the statutes *proceeded from the king without*
" *mention of any council.*"*

In the statute "*de illis qui debent poni in* assisis & ser-
" vatis." The language is particularly strong, "Quia
" dominus rex par publicam et frequentem querimoniam
" mediocris populi sui, &c. &c. Idem dominus rex in-
" dempnitate ejusdem populi prospiciens ac salubre reme-
" dium in premissis desiderans adhiberi, ad communem
" utilitatem *in Parliamento de Termino S. Michaelis anno*
" *regni sui* 21° *incipiente* 22° *statuit in* hac parte, quod
" nullus vicecomes vel, &c. &c. *Nec intendit dns. rex per*
" *statutum illud rescindere ultimum statutum Westmonas-*
" *terii in quo fit mentio,*" &c. &c.†

The ordinance on the roll of 22 Edward I. *de frangen-tibus prisonam :—*

" De prisoneribus prisonam frangentibus dns. rex vult et
" precepit, quod nullus de cetero qui prisonam fregerit
" subeat judicium vite vel membrorum pro fractione pri-
" sone, tantum nisi causa pro qua captus fuerit et impri-
" sonatus, tales judicium requirerit, si de illa juxta legem
" et consuetudinem terre fuit convictus *licet temporibus*
" *preteritis aliter fieri consuevit.*"

" On the 14th June, 22 Edward I. the king issued
" writs to the sheriffs, to summon all those who owed mi-
" litary service to attend the king at Portsmouth, on the

* First Report, 208. † Ryley's Placita Parliamentaria, 166.

"1st of September following, to proceed for the defence "of Gascony, against the king of France, a *service*, "which the military tenants were not disposed to per- "form, and *which they disputed the king's right to en-* "*force.*"*

On the 24th June, 23 Edward I. writs were issued to the archbishops, bishops, forty-two abbots, and twelve priors, the masters of the orders of Sempringham and the Temple, eleven earls, and fifty-three barons, calling them to a parliament at Westminster, on the 1st of August following, but there are no corresponding writs for the election of knights, citizens, and burgesses, nor does it appear that the assembly ever met.

Another writ, tested at Wingham on the 30th of Sept. 23 Edward I. was directed to the archbishop of Canterbury, the introduction and clauses to which set forth the injuries inflicted on the king's French possessions by the king of France, and his threats to extinguish the English language from the face of the earth. It is the first acknowledgment on the part of an English king, that his people ought to be consulted on *all subjects* in which they were interested:—

"*Sicut lex justissima*, provida circumspectione sacrorum "principum stabilita, hortatur et statuit, *ut quod omnes* "*tangit ab omnibus approbetur*, sic et innuit evidenter, "ut *communibus periculis pro remedia provisa commu-* "*niter obvietur*: Sane satis noscis, et jam est ut credimus

* First Report, 211.

" per universa mundi climata divulgatum, qualiter rex " Franciæ de terra nostra Vasconiæ nos fraudulenter et " cautelose decepit, eam nobis, nequiter detinendo. Nunc " vero predictis fraude et nequitia non contentus, ad ex- " pugnationem regni nostri classe maxima et bellatorum " copiosa multitudine congregatis, cum quibus regnum " nostrum et regni ejusdem incolas hostiliter jam invasit, " linguam Anglicam, si conceptæ iniquitatis proposito de- " testabili potestas correspondeat, quod deus avertat, om- " nino de terra delere proponit. Quia igitur previsa jacula " minus ledunt, et res, vestra maxime, sicut *ceterorum* " *regni ejusdem concivium*, agitur in hac parte vobis man- " damus, &c. quod die dominica proxima post festum " Sancti Martini in hyeme proximo futurum, apud West- " monasterium, personaliter intersitis, premunientes prio- " rum et capitulum ecclesiæ vestræ, archid. totumque " clerum vestræ diocesis facientes quod iidem prior et " archidiaconus in propriis personis suis et dictum capitu- " lum per unum, idemque clerus per duos procuratores " idoneos, plenam et sufficientem potestatem ab ipsis ca- " pitulo et clero habentes, una vobiscum intersint, modis " omnibus, tunc ibidem ad tractandum ordinandum et " faciendum nobiscum, et cum ceteris prelatis et proceri- " bus, et *aliis incolis regni nostri*, qualiter sit hujusmodi " periculis et excogitatis malitiis obviandum." Similar writs were issued to the archbishop of York, and the bishops, sixty-seven abbots, the masters and priors of the three orders, but to no other priors.

Writs, tested the next day, the 1st of October, issued to the earl of Pembroke, seven other earls, and forty-one barons, in which the above introduction was not in-

serted, but these writs have the words, "*aliis incolis regni nostri.*"

On the 3d October, writs were issued to the sheriffs of all the counties (except Chester and Durham,) commanding them to cause to be elected for each county two knights, for each city two citizens, and for every borough two burgesses, without delay, and to cause them to come on the day, and to the place appointed for the meeting of earls and barons, and that they should then have full and sufficient power for their respective communities, "*ad* fa-" ciendum *quod de communi consilio ordinabitur* in pre-" missis, ita quod pro defectu hujusmodi potestates nego-" tium predictum infectum non remaneat quoque modo," and the sheriffs were to have there the *names of the several knights, citizens, and burgesses,* with the respective writs.

The representatives of the inferior clergy were required to *attend, treat, ordain,* and *act* with the king, "*et cum ceteris prelatis proceribus et aliis incolis regni,*" thus forming a part of the general assembly.

The king being at this time anxious to strengthen himself by continental alliances, empowered certain individuals to treat with the earl of Flanders, and required that the treaty should be made with the approbation "*baronum et communitatem Flandriæ,*" and the earl on his part, that the barons, gentlemen, and commons of his good towns of his county of Flanders, should approve of the treaty.*

* From this it seems, that the king wished to make the people of Flanders parties to the treaty as well as the earl.

In the twenty-fifth year of his reign, Edward issued writs, tested the 26th January, for assembling a parliament at Salisbury, on Sunday after the feast of St. Thomas the apostle, directed to certain earls, barons, and knights, of which a list is given. The writ to the earl of Cornwall, expresses the king's desire to have a conference with him, "et *quibusdam* aliis proceribus et magnatibus regni." No writs to prelates, or for elections of knights, citizens, or burgesses, appear on the record.

This year the king's accumulated embarrassments, for want of means to pay the troops he had engaged in his enterprises in France and Scotland, induced him to issue writs to the sheriffs, to make known to all who possessed £20. a year land, *as well those who held of the king in chief as those who did not*, that they should provide themselves with horses and arms without delay, to attend the king beyond sea. This illegal demand of the king, against the *chartered rights* of his subjects, occasioned great disturbances, and the king was frequently pressed *to confirm the great charter*, which had thus been violated. By *confirm*, it would appear, was meant *recognize* and adhere to the charter, as he had already *confirmed* it. At length he consented to confirm the charter, on *consideration of an aid.* This anxiety for the confirmation of the charter shows that the constitution still continued the same.

The levy of this aid was opposed by the earls of Hereford and Norfolk, and the citizens of London were amerced by the king's writ for contempt of his authority. This opposition was to the levy of the aid, *without the necessary consent of the commune concilium regni;* no complaint

appears at any time to the enactment of laws on any other subject.

" The discontented earls and barons, according to some " historians, assembled at London, with a military force, " and insisted on the confirmation of the charters, and *an* " *express renunciation by statute, of the right assumed by* " *the king of imposing taxes or impositions by his own* " *authority only,*" which the king eventually consented to, and *by charter* granted, that no tax should be thereafter imposed, " *except by the assent of the whole kingdom,*" from which it may be concluded, say their lordships, " that then, there existed no express law, by which any " assembly was required to be constituted to express that " assent." But it says more; it was by *a charter* the *statute* renunciation of the right was made by the king, not by the act of any legislative assembly.

In the authorised collection of the statutes is inserted, the statute *de tallagio non concedendo*, containing a declaration that, " no *talliage or aid* shall be levied by the " king or his heirs in his kingdom, *without the will and* " assent of the archbishops, bishops, earls, barons, knights, " burgesses, *et aliorum liberorum hominum* of the king- " dom." This was a law touching the chartered right of granting a tax, which, from the Conquest, it was necessary to have the consent of the common council of the realm, as is distinctly declared " in the charters of Wil- " liam the Conqueror, Henry I. Henry II. and John, with " respect to the immediate freehold tenants of the crown, " holding by military tenure, and, perhaps, all the imme- " diate tenants of the crown, not being tenants of the

"ancient demesnes of the crown, for the tenants of cities "and boroughs, of the king's demesnes were not, even "after this statute, *wholly exempt from talliage.*"*

The charter of the 29th Edward I. confirmed that of 9 Henry III. and the Carta Foresta of the 26th Hen. III. and "granted for himself and his heirs, that *if any sta-* "*tutes were contrary to the said charters*, or any articles "therein, they should be amended or annulled by the "common council of the kingdom, *in the accustomed man-* "*ner*, thus referring to the common council of the king- "dom, and to *an accustomed* manner in *which laws binding* "*the whole kingdom, might be made.*"†

Is not this straining the inference? That it was necessary to have the consent of the common council of the realm, "in the accustomed manner," to legalize any law *imposing a tax*, or *changing a service*, or *altering a right granted by charter*, is clear from all the complaints of grievances, and the tenor of the king's acts thereon; but it is as evident that the "*powers of legislation at the date* "*of this charter of* 29 *Edward I. appear to have* been "exercised *in general*, though not *in all cases by the* "*king*, with the consent of those who may be considered "the lords spiritual and temporal, and commons, in par- "liament assembled."‡

In this charter he grants that any statute made *contrary* to the *great charters may be amended or annulled by the common council of the realm.* The natural inference is,

* First Report, 232. † Ibid. ‡ Ibid.

that statutes had before been made *without the consent of that assembly*, and, indeed, that *all the laws* were made by the king and council, but none were complained of, or considered illegal, but those which *trenched on the chartered rights*. If these laws had been made by the king, with the consent of "*those who may be considered the* "*lords spiritual and temporal, in parliament assembled,*" the consent necessary to the legal imposition of a tax, or an extraordinary service would have been given, and the complaint against the enactment uncalled for, and the confirmation of the charter useless; but the case was, that the king had *imposed a tax* by his own authority, *without the consent of the common council of the nation*.

The king's *parliament*, and the *common council* of the kingdom, were different bodies, and, although, generally called together at the same time, had functions distinct from each other; the first was the king's high court of judicature, in which all the king's barons, who, as tenants immediately of his crown, were suitors therein, and if summoned, were bound by their tenures to attend and give the king their advice or verdict, on any subject propounded; the latter was a general council of the realm, which was necessary to legalize a grant of money, or service, or any thing trenching on the liberties granted by the charter, and having consented to these points, had nothing further to do; to treat of an aid was their sole business, and, therefore, we sometimes find them summoned to attend *long after* the earls and barons had been sitting; and they were after called to hear *what should be proposed to them by the magnates*, &c. &c. and therefore, also, we find laws sometimes made by the *king's*

sole authority, sometimes by the king *with the advice of his barons*, and *sometimes by the consent of the common council of the realm*. The plan of summoning this common council, in order to obtain its consent, is not clear. The provision of John's charter pointing out a manner of doing it, was probably an innovation, as it was set aside for consideration by the charter of Henry III. and no account of its re-enactment, or any other in its stead, appears on record. The *custom* of having the assent of the common council arose out of the Conqueror's charter, and was, therefore, the object of a precise provision. This view of the subject reconciles all conflicting points and apparent anomalies.

The statutes of the 26th, 27th, and 28th of Edward, are similar in their character to those preceding them. The statute called "*Statutum de Escaetoribus*," of 29 Edward I. was an *act of the king and his council*. It was enacted in the parliament held that year at Lincoln, at which a letter was written by the earls and barons then assembled, to the pope, in consequence of a bull having been issued, declaring Scotland a fee of the Church of Rome, which it "comments upon, with considerable "asperity, asserting the independence of the king and "kingdom," and concludes, "in cujus rei testimonium "sigilla nostra, sic *tam pro nobis* quam *pro communitate* "*predicti regni Angliæ* presentibus sunt appensa, dated at "Lincoln, 12th Feb. 1300." This parliament is called in the letter a *general parliament*, yet twenty-eight of those persons, whose names appear to the letter, do *not appear to have been summoned to the parliament* at Lincoln, while others whose names *are not in the letter*, *were summoned*,

and the assembly answered for the whole community of the kingdom, *without any apparent authority from the knights, citizens, and burgesses.*

The inference from these circumstances is, first, that, as before stated, this parliament was the king's great court of justice, with which the knights, citizens, and burgesses, *had no connection, save on the subject of chartered rights*, when with the barons, they formed the *commune concilium regni.* Secondly, that all suitors *might*, and *many did*, attend the meeting of the king's high court of parliament, although *not summoned*, and that the king might, and often did avail himself of their services or advice, when on the spot, if he thought it expedient, in the same way as the freeholder, *being in any of the king's courts*, in case of need, may be compelled to sit on a jury, although his name *does not appear on the pannel* among those summoned for the special purpose; and to carry the analogy further, those barons who were summoned to the parliament at Lincoln, and did not attend, were liable to fine for neglect, for the same reason that freeholders summoned on juries are fined; it was a service, by which they held their lands, and though they were always liable to attend the court, they were not always wanted, and, therefore, not summoned, and when not summoned, not bound to attend, and if they did attend, they were not called on to act, unless a necessity, arising out of the emergency of a deficiency of number, required it.

A parliament was held at Westminster, on the octaves of St. John the Baptist, 30 Edward I. this is called, in some of the records of its proceedings, *a full parliament*,

and there are writs to the king's council, the earls and barons, but none to knights, citizens, and burgesses.—Another parliament was held at Michaelmas, in this year, but no statute was enacted, or any business transacted, except the ordinary routine of judicial business.

A parliament was held at Westminster on the feast of St. Matthias, 33 Edward I. of which the proceedings are entered more regularly on the rolls, and four persons were appointed to receive petitions from England, and other persons, those from *Scotland*, *Ireland*, *Gascony*, and *Guernsey*. On the 23d March following, the king by proclamation, prorogued the parliament *sine die*, except the bishops, earls, and barons, who were of the king's council, who were not to go without the king's leave.—The proclamation is addressed to archbishops, bishops, and other prelates, earls, barons, knights of shires, citizens, and burgesses, "*et autres gentz de la commune ke* "*cy sont venus, al mandement nre. Seigneur le rey a cest* "*parlement,*" who might consist of those individuals summoned to render evidence or information to the king and parliament on national business. These petitions were in the nature of suggestions for laws to the king, the legislator.

The whole *community of Scotland* was directed to assemble at Perth, to elect representatives to attend this parliament.

"The *ordinances for inquests*, and that *for the forest*, "in the authorised collection of the statutes, appear to "have been made in this parliament, but by the language

" of those statutes, they *apparently emanated from the* " *king's authority only*, though the *lords spiritual and* " *temporal*, and commons, *certainly attended this parlia-* " *ment.* The language, therefore, of a statute, speaking " in the king's name only, cannot be depended upon as " demonstrating that it emanated from his authority, and " circumstances must generally decide by what authority " it was made."*

Can it be justly concluded, that when so much jealousy was exhibited by the *hauz hommes de la terre*, against the king's encroachments on the liberties, granted by charter, that there could have existed any doubt of king Edward's, or his predecessor's, power to enact laws, unconnected with those rights, when not a single murmur of complaint appears against a practice, which prevailed without any exception, from the Conquest to this period? The laws could not be in so uncertain and unsettled a state; there must have been a system of law, and a firm and steady one, governing and ruling the acts of the king and the parliament, the difficulty has been to find in what rules it consisted, and how it worked; and until a system be discovered, with which *all the acts of legislation and government*, during that long period which preceded the establishment of parliaments on the basis on which they now stand, *harmonize* in all points, the ancient constitution of England will be a mystery. That principle appears to have been what has often before been recited; that the king *enacted all laws not trenching on chartered rights*. That the king might, and often did, enact those

* First Report, 245.

laws at the instance, or by the advice of his privy council only, or part of them, or by the advice, and at the instance of such as were with him at the time, or on special occasions by the advice of the barons of his *high court of parliament*, or on his *own mere motion without any advice;* but in one case, and in one only, *i. e.* the imposition of an aid, or extraordinary service, *it was necessary to ask the consent of the representatives of the people*, which being a chartered right, the king had divested himself of, and granted to the people. Examine the whole of the proceedings and evidences of the antecedent period, and they will all harmonize if thus considered.

This view of the subject, is also confirmed by Bracton, as before mentioned, p. 17. who says—"Si dictio aliqua " duos contineat intellectus, domini regis erit expectanda " interpretatio et voluntas, cum *ejus sit interpretari cujus* " *est condere.*"

On the great statute roll of the 34th Edward I. are the *statute of joint tenants*, and *an ordinance for the forest*, but there do not appear any writs of summons to a parliament of that year, and both *speak in the king's name*, and appear in the *form of charters*.

It appears, from the forms of the writs of summons, which continued to be issued in the reign of Edward I. to the lords, as well as for the election of knights, citizens, and burgesses, "that the idea prevalent in the minds " of the framers of those writs originally was, *that advice* " *should proceed from those called magnates and pro-* " *ceres*, and that the attendance of the commons was

" rather *required to obtain their assent;*" "and the preva-
" lence of this idea may account for the continuance of
" the old form of writs, transmitting statutes to the sheriffs
" and religious houses, after the commons had become of
" more importance in the legislative assemblies of the
" country."

It appears, that after the parliament broke up, the king, at the request of the pope's nuncio, took upon himself to supersede, to a certain extent, the provisions to the statute of Carlisle, which the nuncio construing to a greater extent, the king in council put a restraint on his proceedings; but before the matter was finally determined the king died.

" It seems from those proceedings, that Edward made
" use of his parliament to control the exactions of the
" pope; his desire to withstand which, with his pecuniary
" wants, imposed on him the necessity of deferring much
" to his parliament in the latter part of his reign, and of
" considering that assembly, when convened for legislative
" purposes, as a body generally representing the whole
" people of the kingdom, yet he took upon himself *to*
" *qualify the execution of a statute.*"*

This was perfectly consistent and legal, if the statute, as it most surely did, emanated from the king's sole authority. It would appear that the *lex justissima, " quod ad omnes tangit ab omnibus approbetur,"* was for the turn it was intended to serve, and was afterwards only

* First Report, 253.

adopted as suited the royal necessities; for although some occasional changes had occurred, the *old system*, in spirit, at least, appears to have continued to the end of this reign. Many circumstances had combined to make it necessary to arrange a permanent and settled principle of legislation; the welfare of both prince and people required it; it was found easier to govern by the good will of the people, than by arbitrary and undefined power.

Parliaments, as *legislative assemblies*, really had their *legal origin* in this king's reign, that is, they were first summoned and constituted by lawful authority. The assemblies held previously, were not, as before stated, legislative assemblies; the *commune concilium*, met for the only purpose of granting money, and the conventions of Leicester were illegal assemblies. Edward, to avoid the disasters of civil war, and anxious to reduce the power of the barons, which had inflicted such miseries on his father and grandfather, called to his aid the people, or what was afterwards emphatically denominated the commons, and essayed to form a *constitution* for his kingdom, on a firm and settled basis, adopting the model of the assembly summoned in the 49th of his father's reign. The storms of civil commotion did not allow him to settle it permanently. Their lordships observe, that "*no statute roll "previous to his reign (Edward the First) has been pre-"served,*"* which supplies a strong inference, that no legislative parliament existed before that period. If the evidence which is extant, did not of itself negative the existence of previous parliaments, the records, by showing

* First Report, 167.

that those assemblies were judicial, demonstrate that they were not parliaments, as that term is now understood.

It would be natural to suppose that Edward, in new modelling, or rather in *granting a new constitution* to his subjects, commenced by confirming their old rights and privileges, and summoned as his lords of parliament, those individuals who possessed the greatest power and wealth, most of whom, by the charter of John, were directed to be summoned to the *communia concilia*, by special writs. The barons, indeed, were the magnates and optimates of the realm, and were bound by their tenures to attend the king's court; and the *new parliament*, though differently constituted, being a modification of the old *commune concilium*, and possessing the remaining appellant jurisdiction of the *aula regis*, with other powers newly conferred, might still be considered as a continuation of that body, changed, indeed, in its nature, but possessed of the same character and rights as a court of justice; any man, therefore, owing suit in the *aula regis*, was equally bound to attend the king's new parliament, and was liable to be fined and amerced for absenting himself; therefore, fines for such neglect appear frequently on the rolls, and such of the ancient barons by tenure, as were thus summoned, became lords of parliament, if they obeyed the writ.

It is evident, that the king also summoned many individuals, who, by sub-infeudation or otherwise, had acquired and possessed large estates, and consequently great influence, or who had gained his favour by their services

and fidelity, and they also became lords in his new parliament, although they were not bound by the tenure by which they held their lands to attend the king's court as suitors.

The earliest writs extant of this king's reign, to the sheriffs of counties, for the election of knights, are in the eighteenth and twenty-second years of his reign; writs to lay individuals in the twenty-second, but not to earls or any ecclesiastical persons, nor do the tests of the writs last mentioned correspond with the writs issued to the sheriffs. In the twenty-third of his reign, writs, for the first time, appear on the rolls in regular order: they were directed to archbishops, bishops, masters of orders, abbots, priors, and to earls, and other persons by name, but *described in the record as barons*, and to the sheriffs of counties for the election of knights, citizens, and burgesses, the *sheriff being the returning* officer for all the cities and boroughs in his bailiwick.

Edward, in the new constitution, wisely preserved the ancient laws and customs of the nation, but modified them as far as was necessary to suit the altered circumstances of the times. "The battle of Evesham had proved fatal "to the earl of Leicester and his party, and Henry had "been restored to the free exercise of his royal authority; "the edict of Kenilworth, and the statute of Marlburge, "had produced, in a great degree, internal peace and or-"derly government."

"Though the provisions of Oxford had been annulled "by the edict of Kenilworth, the memory of them still

"remained, and probably had a tendency to *raise in the* "*minds of the people, opinions of their rights*, and of "the necessity of control on the royal power, to pre- "vent those excesses which had provoked the past dis- "turbances."*

But the tyrannous conduct of the earl of Leicester and his powerful adherents, had taught the people, that though the king had been deprived of power, it had only changed hands, and the alteration had not bettered their condition; they had severely felt the despotic sway of these nobles, and were anxious to be secured from the tyranny of factious and interested demagogues, from whose power they found they had more to apprehend, than from that of the crown. The king had still greater reason to fear a repetition of the late scenes, and therefore devised various means to avert it, by weakening the power of the great landed proprietors. By the celebrated statute of "*Quia emptores terrarum.*" he prevented all future sub-infeudations, and made alienations of freehold land, gradually to increase the immediate tenants of the crown, cut at the root of clanship, and eventually weaken the power of the nobles. For if a feoffor held in chief of the crown, the effect of this act was to release a feoffee from his influence altogether, by making the feoffee also a tenant in chief, whereas, before the act, he would have owed suit and service to the feoffor as his chief lord.

"*The appellation of parliament* is now considered as "particularly applicable to the legislative assembly of the

* First Report, 168.

"country, although the judicial proceedings of the house "of lords, as a court of justice, are still proceedings "in parliament; but in the reign of Edward the First "and his father's, the term was applied to an assembly, "regularly meeting at stated periods, and acting gene-"rally as the king's ordinary council, or as a court of "justice."*

* Lords Report.

CHAPTER VI.

EDWARD II.

EDWARD the First, died on the 7th of July, 1307; his son Edward, on the 26th of the same month, summoned a parliament, from which he obtained a grant of a fifteenth from the clergy, a twentieth from the counties, and a fifteenth from the cities and boroughs.

The new king was crowned on the 24th of February, in the third year of his reign, and by the oath then administered, "he engaged to observe and confirm to the "people *the laws and customs* GRANTED BY HIS PREDECES- "SORS, KINGS OF ENGLAND; *and that he would grant to* "*hold and keep the laws and customs, which the* COMMU- "NAUTE *of the kingdom should have elected.*"*

* There are strong grounds for supposing this oath a novelty, framed to control the king's prerogative and power; during the commotions, in this very year, the king was accused of having violated the oath he took at his coronation as well as the great charters.

By writs tested 26th Oct. 3 Edward II. the prelates, earls, and barons, were summoned to assemble at York, on Sunday after the purification, and the writs are noted on the margin of the roll, "*de summonitione parliamenti.*" The place of meeting was afterwards changed by writs of the 12th of December, to Westminster; but there do not appear "any writs to knights, citizens, and burgesses, "to attend this meeting; and from the subsequent docu- "ments, it seems probable that none were issued, and "that the parliament which assembled at Westminster, "consisted only of prelates, earls, and barons."*

This parliament "represented in strong terms, the dis- "orders produced by the imprudence of the king's con- "duct, and obtained from him *concessions much resem- "bling those obtained from his grandfather, by the par- "liament at Oxford.*" The king was prevailed on to issue letters patent, (dated 16th March, 3 Edward II.) granting to the prelates, earls, and barons, that they might choose certain persons, *for a year* from thence following, *to ordain and establish the estate of the king's household and his kingdom*, provided that their ordinances should be made for the honour and profit of the church and the king, and the profit of his people, according to right and reason, *and the oath which the king had made at his coronation.*

"The *ordainers* made ordinances, repealing all grants "made by the king, after the commission to the ordainers, "without any regranting, unless by *common consent of*

* First Report, 259.

" *parliament;* and if such gifts should be afterwards made
" by the king, without the *consent of his baronage in par-*
" *liament,* until his debts were paid, and his estate ad-
" vanced, it should be null and void, and the procurer
" punished in parliament *by award of the baronage.*
" That he ought not to make war, or go out of the king-
" dom, *without the consent of the baronage,* and if it were
" necessary to make war, or go out of the kingdom *by as-*
" *sent of the baronage,* a guardian of the kingdom ought
" to be appointed by *common assent of the baronage.*
" That no new customs or maletolts, levied since the coro-
" nation of Edward I. should be taken of merchants *against*
" *the great charter,* or the franchises of the city of London,
" and *without the assent of the baronage.* That the king
" should make the chancellor, chief judges, &c. &c. by *the*
" *advice of the baronage in parliament,* and by the advice
" of *those about him,* until a parliament was called; thus,
" the lord's ordainers exercised all the royal functions, and
" as was done by the parliament of Oxford, rendered the
" king a cypher."*

Piers Gaveston was banished the kingdom by the ordainers, and several assemblies had been held, some of them *called parliaments,* till at length, in the fifth year of his reign, Edward recalled Gaveston, and by a writ to the sheriffs of Yorkshire, and other counties, (tested 18th Jan. 5 Edward II.) the king declared Gaveston had been exiled, *contrary to the laws and usages of the kingdom,* and that he had returned by the king's command, and was ready to meet any charges against him; and, by other

* First Report, 259.

writs, declared that all the *laws and customs made by his progenitors, kings of England, should be approved,* and all *good ordinances lately* made, should also be observed.

On the 8th of February, a writ issued to the mayor, &c. of London, directing them to keep the city for the king's use, *lest by convocations of prelates, earls, and barons*, or others, prejudices might arise to the king or the city, or other danger; and on the 24th, writs were directed to all the sheriffs, to make proclamation for the tranquillity of the kingdom.

In March, the king protested against the acts of *the ordainers*, and appointed the bishop of Norwich to treat with them, which they, however, declined doing, and an appeal was then had to the sword. The discontented, with Thomas, earl of Lancaster, at their head, sent to the king, at York, demanding Gaveston to be delivered up to them, or banished the kingdom, which the king refusing, they raised a force and besieged Gaveston, who had taken refuge in the castle of Scarborough, compelled him to surrender, and put him to death. At length peace was restored, the barons submitting, on condition that no one should be prosecuted for Gaveston's death, the king releasing them from all displeasure on that subject, and it was agreed that in the next parliament, it should be ordained, that henceforward, all persons should peaceably attend without arms.

This part of the reign of Edward was a time of great confusion, in which the king frequently appealed to the people at large against the prelates, earls, and barons, and

their appeals probably tended to increase the popular influence in the public assemblies, and compelled the prelates, earls, and barons, to resort to similar measures.

The Scots took advantage of the dissensions, and headed by Robert Bruce, appeared in arms; Edward led an army against them, but was defeated and nearly taken prisoner in the battle of Bannockburn. These events increased the discontents in England, and induced the king to summon a parliament at York, but none of its proceedings appear on record, and it may not have met.

On the 23d Oct. 8 Edward II. a parliament was summoned, and met at Westminster on the octaves of St. Hilary. The placita whereof, are entitled, "*Placita "coram rege et magno concilio in parliamento regis.*"

To this parliament a petition was presented of "*Les "grantz seignurs d'Engleterre come prelatz, comtes, et "barons, q'tiegnent in chief de nre seigneur le roi leur "baronies, as queles baronies* plusurs feez sont apurtenantz "dependent et font le service pur meins feez q'eux ne "tiegnent de roi, sicome cil q'est seigneur de cent feez, "fait le service pur cinq ou sis; et aussi les uns pur plus, "et les autres pur meyns; et les uns des fees as grantz "seign' sont assignez a faire gard de chasteaux come de "Dovre, Windesoure, North.' et autres chasteaux, et tut "soit il issi q'les grantz seign' eint fait leur service au roi, "pur tant come il devient faire, et come leur predecesseurs "et leurs auncestres unt fait, en tut temps pur meyns des "feez q'il ne teignent, jatardies l'escuage pur toutz leurs "fees entierement est demande de eux, par somonce de le

" Escheker aussi bien des feez assignez a la gard des chas-
" teaux come d'autres feez, des quieux unques service ne
" fut fait, ne escuage live, come piert par l'escuage de
" Gales de l'an du regne le roi Edward, piere le roi qi ore
" est, disme, et d'autres escuages. Et issi tutjours le de-
" mande court saunz fin faire fors par brief de respit,
" jesqes sur l'accounte de visconte, ou jesques al parle-
" ment, ou rien n'en cret au roi, fors daunger des mi-
" nistres. Dont il prient q'tiel torcenouse demande soit
" oste."

The answer was—"Quia concordatum est per consilium,
" quod omnia hujusmodi respectuantur usque ad proximum
" parliamentum, ut tunc finalis discussio inde fiat, habeant
" conquerentes brevi de cancellario de hujusmodi respectu
" habendo."

This answer was given by the king's select council, as the prelates, earls, and barons, the "*grantz seigneurs d'Engleterre,*"* were the petitioners, which explains the meaning of the words, "*les grantz,*" in other documents. The reference also was the king's parliament *as a court of justice.*

There is an entry which shows, that the king and council acted legislatively at this period, "*even upon subjects determined by statute, notwithstanding the statute,*"† on such proceedings was *founded the dispensing power claimed in after ages by the crown.* Complaint having been made, that the statute of Westminster the 2d, provided that

* First Report, 268. † First Report, 269.

the assizes of novel disseizin should be taken at certain times of the year, when the justices, barons, and serjeants, were so occupied that they could not attend the assizes; it was prayed, that assizes might be taken at all times by justices assigned. The answer was—"Alias propter du-"ritiem que ex statuto, &c. conquerentibus frequenter "accidebat, ordinatum fuit per regem patrem regis, et "ejus concilium, quod assize caperentur quotiens justiciarii "ad hoc vacare possent, juxta discretionem ipsorum; ita "tamen quod summonitiones et premunitiones, &c. debito "modo fierent. Et hoc idem adhuc observetur *non ob-"stante statuto*," &c.

There is a petition to the king and council from the archbishops, bishops, and barons, that *he would ordain* certain prices for certain articles of food—"*A la quele "petition fut par le grand conseil remede ordene et cer-"teyn pris mis sur les choses desudites en le maniere "qu'ensuit.*" To this proceeding the *commons do not appear to have been parties*, and the application seems to have been made to the king and his council, as on a subject *on which they had lawful power*. To which might be added, that the petition came from a body, who *would themselves, with the commons, have possessed this power*, if the legislature had then been constituted *as it now is*, and *not the king and his council.*

Upon another petition, with respect to the statute of Edward I. "*de finibus levatis*," it was ordained *by the king and council*, that the statute should extend to ancient fines, before the making of the statute, as well as to those afterwards levied.

Writs issued, tested the 16th Oct. 9 Edward II. in due form to the prelates, earls, and barons, and for the election of knights, citizens, and burgesses, to meet at Lincoln in fifteen days of St. Hilary; they met accordingly, and the rolls of the proceedings of this are more regularly entered than any former parliament, as on the roll is recorded the formal opening by the king in person, and on the 12th of February, the king appeared in full parliament, "*supplicans et injungens prelatis, proceribus, et ceteris fidelibus et subditis suis, ibidem existentibus,*" that *they should advise him in the premises laid before them.*

The ordinance fixing a price on beasts and victuals was revoked on the next day, and a statute called the "*Statutum Lincoln. de vice comitibus,*" which is expressed to have been made *by the king* in his parliament at Lincoln, *by the information* of his prelates, earls, barons, "*et autres grauntz du roiaum,*" but *no mention* is made of the *knights, citizens, and burgesses*, or of commons of the realm. In the subsequent *grant of an aid*, the knights, citizens, and burgesses, and the community of the realm *are distinctly mentioned.*

"Possibly," say their lordships, "this may be accounted "for, on the ground, that the prelates, earls, and barons, "were the part of the parliament to which the king then "commonly resorted *for advice*, and that the knights, "citizens, and burgesses, were principally considered as "necessary for the purpose of *granting an aid* to the king, "or *giving sanction to some general law affecting all the* "*king's subjects.*"*

* First Report, 275.

The first position is, no doubt, correct; but is there any document or evidence on record, to support the supposition, that the commons to this period, ever were called upon to sanction *any general law*, except those imposing a tax or a service?

There were only two statutes passed during this parliament, the "*articles for the clergy*," in which neither the lords or commons were parties, the other the statute "*de vicecomitibus*," which the king enacted, with the advice of the prelates, earls, and barons, but no mention is made of *the commons*, "and, in truth, the commons seem "to have been little considered in the proceedings of this "parliament, *except in the grants of the two aids of foot "soldiers and of money.*"*

Writs of summons were issued, tested 20th Nov. 11 Edward II. to the archbishops of Canterbury, York, and *Dublin*, and to several bishops, abbots, and priors, the earl of Lancaster, and other earls and barons, knights, citizens, and burgesses, to attend a parliament at Lincoln. The summons to the archbishop of Dublin, was a peculiarity which, perhaps, is not easily to be accounted for. The Lords Committees say, "on what ground the writ to "the archbishop of Dublin was issued, the Committee "have not discovered."† Does it not evince, that the king might and did, at his pleasure and discretion, call any of his subjects to assist him with their advice in his parliaments, and that it was a discretion inherent to the dignity of his crown, or he might dispense with the

* First Report, 276. † Ibid. 277.

service or advice of any, or all those who were in the habit of giving him advice when called upon? In fact, he was a monarch, if not absolute, *only* limited by those laws and restrictions which had been granted by royal charter, and no other restrictions *may be presumed* to have existed, but such as appear in those charters.

The invasion of the kingdom by the Scots, prevented the meeting of this parliament, and the king dispensed with the attendance "*de comitibus et majoribus baronibus et prelatis*," by special writs, and with the knights, &c. by writs to the sheriffs.

Writs issued, tested 25th Aug. in this year, to summon a parliament, and the *statute of York* is expressed to have been made by the *assent of the prelates, earls and barons, and the commonalty of the kingdom.* The statute purports to have been made *for Ireland also,* and was transmitted, as others had been, to that country for observance there.

For a considerable time the king appears to have been acting under the direction and advice of the earl of Lancaster, and others, the *lords ordainers*, which accounts for a greater deviation from the ancient constitution; but soon after Hugh le Despencer, the elder, and Hugh his son, having gained the king's favour, great discontents prevailed, and a confederacy was entered into by the earl of Hereford, and others, to remove them from the king, and banish them the realm.

Writs issued 13th Edward II. for a parliament, but

from the confusion of the times, it is probable it did not meet.

On the 5th of Aug. 14th Edward II. writs issued for a parliament at Westminster in the octaves of St. Michael, and it met accordingly, and the *statute of Westminster the fourth*, was therein made by the king, *by the assent of the prelates, earls, and barons, and all the commonalty of the realm.*

Writs issued, tested 15th May, 14 Edward II. for a parliament at Westminster, in three weeks after the nativity of John the Baptist, which was just before the commencement of the fifteenth year of Edward the Second, and on the close roll of 15 Edward II. is an award of exile of Hugh le Despencer, the father and son, and contains charges shown by the prelates, earls, and barons, and *les autres piers de la terre*, and the commonalty of the realm, against the Despencers, charging them with advising the king to act *contrary to the great charter*, and the *award of the peers of the land*, and not suffering the king to take reasonable fines from the peers of the land, in manner accustomed, to their disherison, thus making the king to *deny right in parliament, contrary to his oath!* and concludes:—"Therefore, we, peers of the "land, earls, and barons, in the presence of the king, do "award that Sir Hugh le Despencer, the father, and Sir "Hugh le Despencer, the son, be disinherited for ever, "&c. &c. and that they be utterly exiled out of the realm "of England, without returning at any time, unless it be "by the assent of the king, and by the assent of the pre-"lates, earls, and barons, and that in parliament duly "summoned," &c. &c.

It is remarkable that this document affords the first instance yet discovered on record of the earls and barons being styled *peers of the land*, and the award of exile is by them without mention of the commons, and this was, no doubt, a sentence by the parliament in their judicial character. The proceeding was of a revolutionary character, for historians represent the discontented lords to have assembled in great military array, so as to have the king and the rest of the parliament in their power. This is also asserted in the act, annulling the exile of the Despencers. An act was afterwards passed to indemnify all those concerned in this violence.

It is also asserted in a writ, dated 12th Nov. that the earl of Lancaster had attempted, by letters addressed to the peers, to convene a meeting at Doncaster, to treat of grievances, thus usurping the royal jurisdiction. This was prohibited by the king, who recalled the Despencers, raised an army, and in a battle, at Burton-on-Trent, defeated the discontented lords. The earl of Hereford was killed, the earl of Lancaster, and many others were taken prisoners, and, with several of his adherents, arraigned, tried, and executed.

By writs tested at Derby, 14th March, 15 Edward II. a parliament was summoned to meet at York, to which the king thought fit to summon representatives from Wales, and a writ was directed to earl of Arundel, the king's justiciary there, stating "that the loyalty of the people of "Wales had induced him to desire the counsel and advice "of his faithful subjects of those parts, on those matters "which specially concerned the state of his kingdom, and "the tranquillity of his people," and, therefore, the jus-

ticiary was directed to cause twenty-four men for South, and twenty-four for North Wales, to attend the parliament at York.

The award against the Despencers was annulled in this parliament, it was stated to have been obtained by a dread of the force which the earl of Hereford and others had suddenly brought to the parliament at Westminster.

The ordinances of the 5th Edward II. were also revoked, and for the first time the legislative power fixed by statute. To settle this important subject, and to protect the king against future conspiracies or confederacies of the great barons, and the recurrence of similar enactments of those of Oxford, and the 5th of Edward II. it was enacted—

"That for ever thereafter, *all manner of ordinances or* "*provisions* made *by the subjects* of the king or his heirs, "by any power or authority whatsoever, concerning the "royal power of the king and his heirs, or against the "estate of the crown, should be void, and of no avail or "force whatsoever. *But the matters to be established for* "*the estate of the king and of his heirs, and for the* "*estate of the realm and of the people, should be treated,* "*accorded, and established* IN PARLIAMENTS *BY THE* "*KING, AND BY THE ASSENT OF THE PRE-* "*LATES, EARLS, AND BARONS, AND THE* "*COMMONALTY OF THE REALM, in manner, as* "*HAS BEFORE BEEN ACCUSTOMED.*"

"This proceeding declared the legislative authority to

"reside *ONLY in the king*, with the assent of the *pre-*
"*lates, earls, and barons, and commons, in parliament as-*
"*sembled.*"

From this time, therefore, the constitution of the legislative assembly of the nation was so far settled, that proceedings in parliament may be taken as precedents to govern decisions. This parliament may be considered as the concluding act to the revolutionary drama which commenced in the reign of John, and was a consummation equally necessary to the king and his people. There was a great surrender of power on the part of the prince, but he gained much in security for that which was left him.

This statute was the settling of the *new constitution;* heretofore, the legislative functions of the common council of the realm were confined to the granting of money, or other description of aid, to the king; this enactment extended its power to "*whatever should be estab-*
"*lished for the estate of the king, the realm, and the*
"*people.*"

The law is of itself evidence of the *novelty of its enactments*, and proves that after many long and bloody struggles, the king and the barons entered into a compromise for their future mutual safety and security, and calling in the commons as a check to the encroachments of either, formed a constitutional legislature, in which all the *gents de la terre* had an interest.

Notwithstanding the act, the regular assent of the whole parliament does not appear to have been required

to every enactment; the Lords Committee seemed to think, "that it was thought sufficient that the assent of those "should be given, *whose interests were directly and im-* "*mediately affected by the act to be passed.*"

In the 18th year of Edward II. writs were issued, tested 6th May, summoning the archbishops, several bishops, abbots and priors, earls and barons, to a parliament at Westminster, on the morrow of St. John the Baptist, but it does not appear that any writs issued to sheriffs for the election of knights, &c. and "if no "writs issued to the sheriffs, this as well as other re- "cords, demonstrate that, *the attendance of the knights,* "*citizens, and burgesses, representing the counties, cities,* "*and boroughs, was not then deemed essential to the* "*holding of a parliament for all purposes,* though the "statute of York, of 15 Edward II. demonstrates, that "the assent of the knights, citizens, and burgesses, was "then deemed essential to the authority of a law *to the* "*extent expressed in the statute. The convention of the* "*king's parliament did not necessarily include the con-* "*vention of a legislative assembly in parliament; and* "*the convention of a parliament, not including the legis-* "*lative assembly, was the convention of a council and* "*court of justice only, though properly denominated the* "*king's parliament, according to ancient usage.*"*

The king at length fell into the hands of his enemies, was deposed and put to death, and was succeeded by his son Edward the Third, in whose behalf he had abdicated the throne.

* First Report, 286.

CHAPTER VII.

EDWARD III. TO HENRY IV.

"THE period which elapsed during the reigns of John, "and Henry the Third, may be deemed a period of *pro-* "*gressive revolution*, arising from circumstances, which "at length produced that constitution of the legislative "power which was clearly established before the close of "the reign of Edward the First, and was afterwards "fixed as the established law of the land, by the decla- "ratory statute of the 15th Edward II."*

It is not, however, to be concluded, that this statute divided the houses of parliament. James the First of Scotland, is said to have introduced into that country the English system of holding parliaments, and if so, it would appear that the peers and commons sat together long after this period.

It is, perhaps, well to remark here, that during the

* First Report, Note 22, p. 458.

early part of this reign, the *states-general* of France were first established, which shows the contagious effect of opinions among neighbouring nations. In the second chapter it will be seen, that it was very similar in its construction to the new English parliament, and was introduced by the king for the same purpose, namely, to protect him against the dangerous encroachments of the great vassals and barons, and most effectually it answered the end proposed, but ended in absolute monarchy.

The deposition of Edward II. was a new chapter in the English revolution. The parliament of the 20th Edward II. compelled the king to resign the crown in favour of his son, then but fourteen years old, who was declared king. The proclamation, dated 24th Jan. 1326, stating that the late king, of his own free will, by the common council and assent of the prelates, earls, and barons, *and other nobles*, and all the community of the kingdom, had removed himself from the government of the kingdom, and willed that his son should be king, and, therefore, all had done him homage. At his coronation the new king took an oath similar to that taken by his father.

The parliament of the 1st Edward III. passed a law, depriving the king of the power of preventing alienations of land, held of him *in chief as of his crown*, and making it obligatory on him to accept a reasonable fine for alienation without license, and the king himself disclaimed any right to prevent alienations of land held as *of an escheat.*

The first entry in the proceedings of the parliament

held in the 4th Edward III. are the articles of accusation against Roger de Mortimer, which were examined by the earls, barons, and peers; they reported that the truth of the charges were notorious, particularly the charge for the murder of the late king, and, therefore, they awarded and adjudged the said Roger, as a traitor, should be drawn and hanged, which was done accordingly. This judgment was afterwards reversed as informal for want of legal trial.

The king then desired the earls, barons, *and peers*, to proceed to give judgment against Sir Simon Beresford, knt. but they refused, saying he was not *their peer*, and, therefore, they were *not bound to judge him*, but as his guilt was notorious, they, *as judges of parliament*, by assent of the king, awarded and adjudged the said Simon as a traitor, to be drawn and hanged, which was done accordingly.

These proceedings were altogether illegal and irregular, and it was agreed at the time that they should not be drawn into a precedent.

Their lordships state these proceedings as worthy of notice, on account of the distinction made of the titles of earls, barons, and *peers*, "from which it might be supposed, that there were persons "*peers of the realm*, who were *not earls or barons*."

In the proceedings of this parliament, is an entry in which the phrase "*autres gentz*," is omitted, and that of "*gentz du conseil du roi*" substituted, which explains the meaning of the words *autres gentz*, in former proceedings.

Another entry is remarkable, inasmuch as it explains in some measure, the term "*plein parlement.*" The commons had been dismissed on Saturday; and on Monday following, Geffery le Scrope, is said to have made a statement to the persons then assembled, "*en pleyne parliament,*" although the commons had been dismissed, which shows clearly, that a full parliament meant nothing more than there were barons sufficient, or a quorum, to constitute the parliament a *full* or *legal court of justice.*

A parliament was summoned to meet on the nativity of the Virgin, 6 Edward III. to consult on the affairs of Ireland, and on the second day thereof it is stated, that the prelates, by themselves, the earls and barons, and *autres grantz*, by themselves, and the knights of the counties by themselves, and without the citizens and burgesses, proceeded to grant the king an aid:—"For that
" the king could not do the things proposed without the
" aid of his people, therefore, the prelates, earls, barons,
" *et autres grauntz*, and the knights of the counties *et*
" *tote le commune*, granted to the king the fifteenth penny
" to be levied of the *communalte*, and the tenth penny
" to be levied of the cities and boroughs and demesnes;
" and *the king (at the request of the said prelates, earls,*
" *and barons, and knights of counties*, in easement of his
" people) granted that the commissions which had been
" lately issued to assess talliage in the cities, burghs, and
" demesnes, throughout England, should be repealed; and
" that in all time to come, such talliage should not be as-
" sessed, *but as it had been done in the time of his ances-*
" *tors*, and as it ought to be by reason."

The commissions here alluded to, are on the patent roll of 6 Edward III. whereby the king appointed commissioners to assess his talliage in the cities, boroughs, and demesnes, of the king separately "*per capita*," or in common, as should appear best for the profit of the king. The king's right to assess the talliage was not at this time questioned, which clearly shows the imperfect state of the legislative parliament at this period, and shows its gradual progress. The cities and boroughs here, apparently wished to tax themselves a larger sum to the king, than he would receive by the old and vexatious system of talliage, and thus by compromise, the king's right to tax at his will was eventually done away.

It is also observable, that the parliament at York, the 3d of this year, the bishops and clergy acted by themselves, the peers by themselves, and the knights and commons by themselves. But frequently the knights acted separately from the citizens and burgesses, who were little regarded, unless when an aid was required. "The parliament, "therefore, had not yet completely assumed its present "form; the *lords and commons were not yet considered* "*as two houses perfectly distinct, and acting separately*, "and on perfect equality in their different functions; the "knights of the shires appear to have been treated as *a* "*higher order*, than the representatives of cities and "boroughs, and on this, as on other occasions, *the par-* "*liament continued after the knights, citizens, and bur-* "*gesses, had been dismissed.*"*

* First Report, 307.

In the thirteenth year of Edward III. the king, *for the first time, signified to the commons the cause of* the meeting of parliament, which shows a further increase of consequence, and it was agreed to assist the king with a considerable grant of money. The *grauntz* gave an answer in writing, in which they gave the king the tenth sheaf of corn of every kind of their demesne lands, except from the lands of their bondsmen, the tenth fleece and the tenth lamb of the next year, but they stipulated that the old tax *(maltolt)* on wool and other demands, should not be levied in future.

The commons gave their answer in writing, that they must consult their constituents, and requested another parliament to be summoned, but in the mean time they would do their utmost to obtain the king a proper aid.

At a second parliament held this year, the commons offered 30,000 sacks of wool to the king, on certain conditions, which, if refused, they would give no aid; but the earls and barons granted for themselves, *and for their peers of the land, who held by barony,* the tenth sheaf, fleece, and lamb of their demesnes. "What was meant "by the words, *who held by barony*, and whether it was "intended to distinguish any part of the peers from the "rest, or to imply that all the peers held by barony, may "be deemed doubtful." Such is the opinions of the Lords Committees. But it is suggested that the true meaning was this:—That those peers, *who held by barony*, had in each *barony* or manor, a liberty, and their tenants were copy-holders of the barony or manor, and were *not represented by the knights of the shires*, or otherwise, than

by their lords, their natural protectors and representatives, while those peers who did not hold land by barony, had no tenants of that description.

In the fourteenth year of Edward III. the prelates, earls, and barons for themselves, *and all their tenants*, and the knights of the shires, *for the commons of the land*, made a grant to the king of the ninth sheaf, &c. and the citizens and burgesses a ninth of all their goods. The tenants of those who held by barony, claimed to be discharged of the expenses of the knights of the shires.

These entries clearly show, that the knights and the commons, for whom they granted, were either tenants in chief of the crown or by subinfeudation of those tenants, and not of those prelates, earls, or barons, who *held by barony;* and explain why the copy holders of manors or baronies, have never had votes for knights of the shire; they did not owe suit or service in the *county court,* but in that of the *manor.* All persons interested were, *in conformity to first principles*, called upon to give their assent by themselves, their lords, or their representatives.

In this parliament several persons were assigned to dispatch petitions, and form them into statutes, to which, *for the first time*, six citizens and burgesses were now added; an innovation, and a gradual acquisition of power by the commons.

In the fifteenth year of Edward III. the prelates, earls, and barons, and *autres grauntz*, "*who were bound to come to parliament,*" stated that they had made a grant

to the king of a ninth sheaf, &c. and that the king's officers required also a ninth of the other clergy, who were not bound to come to parliament, and should pay their tenth. It was answered by the king, that only those, who held of the king by barony, should pay the ninth, and that the other men of holy church who held nothing by barony, and were not accustomed to be summoned to parliament, should pay a tenth.

The note on this by the Lords Committees, is as follows:—"This passage seems to confirm the view the com-"mittee have taken of the ancient constitution of the "*common council* of the realm, namely, that it was an as-"sembly of barons, *all bound to attend by reason of* "*tenure*."

With the most humble deference, it is suggested, that the ancient barons *were by reason of their tenures bound to attend the curia regis*, which was afterwards called the king's parliament, or high court of judicature, but the "*common council of the realm*," had but one function, that of *granting or refusing an aid;* and although those prelates, earls, and barons, formed part of the common council with the other tenants of the crown, their tenure only compelled their attendance on the *king's court*, which being held at the same time and place, as the *common council*, the king could therefore compel their attendance, but if those who did owe service to the king's court were absent, they were liable to the acts of those present, if legal notice had been given. This interpretation is evidently correct, from the constant occurrence of *dismissing the commons* as soon as the grant had passed,

and the *common council* had accomplished the business for which it was summoned, while the *curia regis*, or *parliament*, continued its sittings. The opening of the parliaments in this reign, was also frequently delayed by the absence of the lords, but never by the commons. The advice of the knights was sometimes asked, but the citizens and burgesses were never consulted except for their concurrence in aid. In the forty-sixth year of Edward III. the *citizens and burgesses* were required to remain after *the knights* had been dismissed, and were prevailed on to *grant an aid.*

In the twenty-seventh year of Edward III. on Monday after the feast of St. Matthew, the king held a *magnum concilium*, at Westminster, in which the ordinance of the staple *was promulgated.* To this only one knight for each county was summoned, but two citizens and burgesses were summoned from thirty-seven cities and boroughs. The commons required that the acts of this council should be rehearsed at the next parliament, because the ordinances and agreements made in councils *were not of record, as if they had been made in the common parliament.* The king, however, answered, that the ordinances of the staple should be strictly observed, but at the next parliament for *security* they should be put on the roll of parliament. The king, therefore, considered, that he possessed the power of making, in a great council, an ordinance to have the effect of a general law.

In the forty-seventh of Edward III. a convocation of the clergy of the province of York, was summoned, and granted an aid to the king.

In the fiftieth year of Edward III. the commons prayed that the knights of the shire might be elected by the chief freeholders "*de les meilleurs gents*," to which the king answered, "*the king wills that they shall be elected by common assent of the county.*"

In the 51st of Edward III. amongst the petitions of the commons, is one stating that, of common right, for every county, there should be elected two persons to be at the parliament for the commons of the said county, except for prelates, dukes, earls, barons, and such as hold by barony, "*et queux sont et serront somonez par bref de vener a parliament,*" and cities and boroughs, which persons were to have their expenses. The petition then prays, that these expenses should be levied of all the commons *as well within franchises as without*, except the franchises of boroughs, and those who attend parliament by writ, and their tenant by bondage. The answer was, "*soit fait come devant ad este use in ce cas.*"

This shows, as stated by the Lords Committees, that tenure by barony was an acknowledged tenure at this period, 51 Edward III. but the exception is for those who held *by barony, and were also summoned to parliament*, which latter was the ground of exemption, because the knights *were the representatives of those who held by barony*, and *were not summoned* to parliament, and, therefore, they ought of right to pay.

In the parliaments of Edward III. frequent reference was made to the great charter, and the charter of the forests, by which it is evident, that those documents were

considered as the foundation of their liberties, and that we cannot justly look for any rights or privileges, but those granted by charter, or that the constitution then existing, so imperfect and unsettled, was the result of a series of concessions on the part of the king.

Among the petitions of the commons of the 51st Edward III. is one that no statute or ordinance should be made or granted at the petition of the clergy, without the assent of the commons, as the clergy would not be bound by any of the king's statutes or ordinances made without their assent. The answer was, "*soit ceste matir declaree en especial.*"

Richard the Second, succeeded his grandfather at the age of eleven years. In the parliament held in his fourth year, the commons prayed that as the clergy possessed one third of the kingdom, they should bear one third of the charges, and that the counties palatine of Chester and Durham, and the cinque ports, and all other places so situated, should bear their share of the common burthen as reason required. The king answered that the cinque ports should be charged, and that he would do what he could with those counties *saving their franchises*.

The commons, by these petitions, were striving to make the constitution of their house what it afterwards became, the representation of the people of all England.

A popular insurrection in the fifth year of Richard II. had obtained from the king a patent, enfranchising that part of the population then in a degree of personal slavery,

which, their lords afterwards objecting to, the patent was recalled and repealed.

The word *banneret*, which means nothing more than a knight made under the royal banner, and gave *higher precedence than simple knighthood*, had been supposed by some to have reference to sitting in parliament, but the Lords Committees very justly assign its proper signification, and it is rather singular that any other meaning should ever be given to the word, or that it was supposed in any way the ground of summons to parliament.

On the roll of the parliament of the 5th Richard II. is an ordinance that all persons and commonalties, from thenceforth should have summons to parliament, in manner as they were bound, and had been accustomed in the kingdom of England of ancient time, and if they should have such summons, be he archbishop, bishop, abbot, prior, duke, earl, baron, *banneret*, knight of county, citizen of city, or burgess of borough, or any other person or commonalty, and be absent, if he could not give a reasonable and just excuse to the king, he should be amerced, and otherwise punished, according to what had of old time been before used in the kingdom in such case, and the sheriffs should be punished, if he was negligent in making proper returns.

The occasion and meaning of this ordinance, is somewhat explained by the writ on the patent roll of Ireland, of the 51st of Edward III. directed to the treasurer and barons of the Exchequer of Ireland, on the petition of Walter L'Enfaunt, in which he stated that *tanquam te-*

nens per baroniam, he had been amerced for not attending the king's parliament, as he had been summoned by the king's writ; whereas he did not hold by barony, as appeared by inquisition, and, therefore, he prayed to be discharged from the amerciament, and as it appeared that the said Walter did not hold by barony, "*et non est juris* "*seu consuetudinis in dicta terra nostra hactenus usitate,* "*quod aliqui qui per baroniam non tenuerunt, ad parlia-* "*menta nostra summoneri, seu occasione absentie sue ab* "*eisdem amerciari deberent, de gratia nostra speciali par-* "*donamus eodem Waltero amerciamentum predictum,*" &c.

Considering this document of great importance in the elucidation of this very obscure subject, I took the liberty of sending a copy thereof, to one of the noble lords on the committee, and in the edition of the report ordered to be reprinted in February, 1823, this writ is noticed in note 64, with the following observation :—"This seem "to import, that even in the 51st of Edward III. the "notice of tenure by barony in Ireland, was considered, "in Ireland, as the only ground on which a person could "be *required* by the king's writ to attend the parliament "as a baron."

If by the word *required,* their lordships meant *compelled under pain of amerciament* to attend, the notice is correct, for no one could be legally compelled to perform *a service* which their tenure did not require of them, and none, but those who held by barony, were suitors in the king's great court or parliament, and, therefore, were bound to attend *under penalty.* But many were summoned who did not hold by barony, and, attend-

ing, became lords of parliament, though they were not liable to attend the king's court by their tenure.

The ordinance of the 5th of Richard II. made only five years afterwards, seem to have been intended as a remedy for an evil, by subjecting *all who should receive writs* to fine and amerciament, if they did not obey the summons, as well those, who, by their tenure, were liable to attend the ancient *curia regis*, as barons, or suitors, as those who by the establishment of legislative parliaments, in which the functions of that court were merged, had become lords of parliament, although not territorial barons, and had attended parliaments. L'Enfaunt was a lord of parliament, but not a baron by tenure, and his heirs were afterwards summoned to parliament, as such, he might attend the parliament, having received a writ, but he could not be fined for neglect, as he was not a member of the old court of barons.

This statute may also have given a more fixed character to the legislative body, than it before had, and shows its progress.

John de Beauchamp of Holt, was created a peer of parliament by patent, in the eleventh year of this reign, and is generally considered the first baron created by patent; the patent imported that the king had created John de Beauchamp, "*unum parium et baronem regni nostri Angliæ*," a method which has been generally followed by the succeeding sovereigns.

The Lords Committees conclude their observations on

this reign—"*That the constitution of the legislative as-*
"*semblies of the realm was at this time not completely*
"*established on those clear grounds, which have since*
"*been adopted.*"

The deposition and death of Richard the Second, was a further chapter in the revolution of England, in which was effected a most important change in the descent of the crown and royal dignity; the lawful heir, by hereditary right was set aside, and a junior branch of the royal house substituted in his stead, *wholly on the authority of the parliament of lords and commons, summoned in the name of the deposed sovereign*, assuming the character of the *three estates* of the realm, accepting, in that character, the forced resignation of Richard, and assuming the power to pronounce his deposition, and to advance Henry to the vacant throne.

The lords spiritual and temporal alone adjudged Richard to perpetual imprisonment; the commons were not parties, and they disclaimed any right to join in any judgment of the parliament, which they said belonged only to the king and the lords. To which was answered by the archbishop of Canterbury, by command of the king—"*That the com-*
"*mons were petitioners and demanders, and that the king*
"*and the lords, of all time had, and ought to have, of*
"*right, the judgments in parliament, in manner as the*
"*commons had shown, save that in a statute to be made,*
"*or in grants and subsidies, or such things to be done for*
"*the common profit of the realm, the king would have es-*
"*pecially their advice and assent; and this order of pro-*
"*ceeding should be holden and kept in all time to come.*"

Here the functions of the commons were again modified by this new revolution. To this period their *assent* only had been necessary to a grant of an *aid;* on this occasion the king willed and gave them power *to advise on all things for the common profit of the realm.* Thus, by each new revolution the commons acquired new powers, and eventually became a separate and distinct estate and chamber of the parliament.

"In the speech of the chief justice to the commons, by "the king's command, in the 2d Henry IV. they were "directed to elect a common speaker, and to present him "to the king, '*come le manere est,*' on the next day, "which was done, and the whole of the proceedings of "this parliament bear a nearer resemblance than those in "former parliaments, to the proceedings at the present "time."*

In the 7th and 8th of Henry IV. the descent of the crown was settled by statute, on the king and his heirs male. The knights, citizens, and burgesses, assembled in parliament, were in this statute considered as the proxies and attornies, *or representatives, of the whole kingdom,* and had power to act *for the whole.* "This seems to have "been intended as a legislative declaration of what was "then considered as the true constitution of the legisla- "tion of the kingdom, established by the custom and "usage of the kingdom, to give authority to the solemn "act for the settlement of the crown."†

* First Report, 354. † Ibid.

"In the same parliament, provision was made touching "the election of knights of the shires; that at the next "county, after the delivery of the writ to the sheriff, pro- "clamation should be made, in full county, of the day, "and place of the parliament, and that all those who "should be present, as well *suitors summoned for any* "*cause*, as others," "should go to the election." That is to say, the freeholders, who were and are the only suitors in the county court. So it was in the king's court, the barons who were the suitors, whether summoned for the special purpose intended or not, if present, assisted in that purpose; thus it happens that we find barons not summoned acting in the parliament as before-mentioned.

"It must be presumed, that so much of this statute as "declared who should be the electors of the knights for "counties *was deemed necessary, at least to remove some* "*doubt on the subject.* In many preceding parliaments "the commons had desired a parliamentary declaration, "by whom the wages of knights of the shires were to be "paid, to which answers referring to usage were given; "in some cases the peers insisted that their tenants were "exempted from the charge, being *represented by them;* "but in the proceedings on the deposition of Richard, the "peers had assumed the character of *one of the estates of* "*the realm*, all the rest of the laity, including the tenants "of those peers, being considered as *forming another and* "*distinct estate*, and through the whole of the reign "of Henry IV. were treated as the representatives of "all the commons of the realm, *forming the distinct* "*third estate.* Thus *gradually* had the constitution been "formed."

This paragraph, which is the substance of one in their lordship's first Report, p. 357, gives a correct view of the origin and progress of the constitution. First, the Conqueror gave the right to assent to, or refuse an *aid*, or extraordinary impost, which continued the sole privilege of the commons, till the reign of Henry III. when a revolutionary movement put all power into the hands of the barons, who formed a convention or assembly, called by them a parliament, which continued till the defeat and death of Leicester, when things reverted to their old course. The necessities of Edward I. induced him to court the lower orders, and he issued his proclamation containing the just principles of a free constitution, which it appears he forgot when his wants were satisfied, and things went on as theretofore. The lords ordainers again wrested the royal power from the feeble hands of Edward II. but the defeat and death of the earl of Lancaster restored the king to his power, who, for his own security, enacted the celebrated statute of the 15th Edward II. settling what should be the legal power of legislation, which, however, seems afterwards as little regarded as the *lex justissima* of his father. The deposition and death of Edward II. strengthened the hands of the parliament, who gradually petitioned for, and obtained *new rights* from Edward III. and Richard II. and the deposition of the latter, and the election of an individual out of the hereditary line of right descent of the crown, acquired for the commons the right of *assent* or *dissent* from the enactment of laws, which they never before had by legal authority, *i. e.* by royal concession. They had occasionally exercised the power, by force of arms, or rather it might be said, that a revolu-

tionary assembly called the commonalty or parliament of England, exercised these functions.

In the parliament assembled at Gloucester, 9 Henry IV. by command of the king, a message was sent to the commons, desiring them to send to the king and *the lords a certain number of their fellows, to hear and report to their fellows what they should have in command from the king*. The commons sent twelve of their members, and the question which had been previously put to the lords, namely, what tax they conceived necessary for the public service, to which the lords had answered, that less than a tenth, &c. &c. would not suffice, was put to them, and the king willed the messengers of the commons to report it to their fellows. The report being made to the commons, they were greatly disturbed, and affirmed the proceeding to be in prejudice and derogative of their liberties.

The king, alarmed at the spirit exhibited by the commons, *willed, granted, and declared*, that it should be lawful for the lords to commune amongst themselves in that parliament, and in every other in time to come, in absence of the king, of the state of the realm, and of the remedy necessary for the same, and that in like manner it should be lawful for the commons on their part, to commune together of the state and remedy aforesaid, provided always, that the lords on their part, and the commons on their part, should not make any report to the king of any grant, by the commons granted, and by the lords assented to, nor of the communications of the said grant, before the lords and commons should be of one assent and accord

in such matters, and then by the mouth of the speaker of the commons as had been accustomed, and that the late communication should not be drawn into a precedent. *

This declaration of the king proves, that whatever had been the practice, the constitution was not clearly settled or understood until this period. The practice hitherto had been uncertain and various. The *lex justissima* of Edward I. seems to have been the origin and ground of the power of the commons.

The regular assembly of a parliament four times in every year for the administration of justice, as a court of original jurisdiction, had now fully ceased, and its character became totally changed from its original constitution of a court of record, into what it has been and now is, a legislative assembly, retaining only its ancient character of a court of dernier resort and appeal; "*still* reserving "the judicial decision to the king and the lords, as con- "stituting the ancient court of justice in exclusion of the "commons." †

"In the course of the reign of Henry the Fourth, "much had been done to ascertain the true constitution "of the legislative assembly of the realm, and to assign "to its component parts their respective character and "duties, and their mutual relations; so that at the close "of his reign, it may be said, to have approached nearly "to what it now is." ‡ It is unnecessary to carry the investigation farther than this period. The object in view,

* First Report, 360. † Ibid. 363. ‡ See *post.* in Irish Parliament.

being to show the revolutionary origin and progress of the legislative assemblies of England, and having demonstrated, that they were the result of revolution and encroachment on the power of the king, it has been so far proved that a baron by tenure, was not necessarily a lord of parliament, but might have been made so, as any other individual might, *by summons to the newly established assembly*. Therefore, the dignity of a modern peer or lord of parliament, having arisen out of revolution, cannot take date previously to the revolution which gave it existence. The following chapter will show, that the proceedings on claims for peerages, favour this view of the subject.

CHAPTER VIII.

OF MODERN PEERS OF PARLIAMENT.

In this chapter will be given an abstract of the third general report of the Lords' Committees, which chiefly consists of reflections and conclusions on the evidence produced in their lordship's previous reports—an investigation of the various claims made to peerages, and the creations of peers by patent. The circumstances, too, arising out of the final establishment of the legislative parliaments, engrafted as they were on the ancient judicial *aula regis*, or high court of *feudal barons*, will be considered. Many feudal barons, by summons, became *parliamentary barons*, but others, who had lost their influence by alienating their property, or other causes, never acquired that dignity.

"The constituent parts of the legislative assemblies of "the realm, appear to have VARIED at different periods, "the *nature of the dignity* of a *peer* may have likewise "VARIED, and a vast majority of the members of the "peerage, *as now constituted*, must *claim* their dignities

" from a *different source*, than that from which the mem-
" bers of the early legislative assemblies, after the Nor-
" man conquest, may have derived their titles, especially
" if those assemblies consisted only of *prelates, earls, and*
" *barons, or tenants in chief of the crown,* which seems
" *highly probable.*"

" It *may be inferred*, that in the reign of the Conqueror,
" and several of his successors, considerable powers of
" legislation was probably exercised by the crown, with
" the assistance only of a selected council, but that more
" important subjects of legislation, and especially such as
" operated to charge property, in the hands of individuals,
" subject by the law, to such charge, required a greater
" sanction, and that sanction was usually given by an as-
" sembly, which may be deemed to have been properly
" the legislative assembly of the realm *for general pur-*
" *poses.* Whether that assembly had a settled constitution,
" established by *clear and express law*, or founded on
" *usage* only, or whether its constitution depended, in any
" degree, on temporary circumstances, and varied accord-
" ingly; and *whatever* may have been at *different times*
" the characters, powers, and privileges, of its several
" constituent parts, during any period, it *can scarcely be*
" *doubted* that, during the long lapse of time from the
" Conquest, to the close of the reign of Edward the First,
" many circumstances materially affected the rights of
" persons who, at different times, during that period, may
" have been deemed necessary members of the legislative
" assemblies of the realm, and especially of assemblies
" convened for charging the people with extraordinary
" aids, or establishing important alterations in the general

" law of the land; and at the close of that period, who " *may have been before* deemed *entitled to be personally* " *summoned*, as members of such an assembly, may *no* " *longer have had such rights*, but may have *become re-* " *presentatives*, or constituents of *representatives*."

" The crown possessed the power of imposing taxes or " *talliage* on the tenants of its own immediate demesnes, " without their consent."

" The rise of the house of commons, without any ex- " press law for the purpose, may have been the *natural* " *result* of the situation in which the country was placed " at the close of the reign of Henry the Third, or the ac- " cession of his son. The gradual, though slow, increase " of power in the house was the natural result of its es- " tablishment."

" The legislative power was declared by the statute of " 15th Edward II. to rest in the king, with the advice " and assent of the lords, spiritual and temporal, and com- " mons in parliament assembled." Though farther changes were afterwards made, and that which had probably been *one body*, *all the members* of which, had *equal rights and privileges*, in the character of members of a legislative assembly, became *two distinct bodies*, one consisting of the lords spiritual and temporal, having distinct and *permanent rights and privileges*, the other consisting of a representation of all the subjects of the realm.

" The term '*peer of the realm*,' until the union with " Scotland, was the distinguishing appellation of a *tem-*

" *poral lord of parliament.* After the union with Scot-
" land, the peers of Scotland became *peers of Great Bri-*
" *tain*, but were not *lords of parliament unless elected.*"

" The term '*peers of the realm,*' was not used to dis-
" tinguish the temporal lords of parliament before 15th
" Edward II."

The charter of John was the *earliest* document to provide, by express law, for the constitution of the common council of the realm.

The right of a spiritual person to be a lord of parliament, is incident to his benefice, not to his dignity of a bishop or archbishop.

The members of the common council of the realm, during many years after the Conquest, except earls and ecclesiastical dignitaries, had *no dignities* in the sense of the word, as now commonly used, and the dignities they did possess did not belong to them *as members of the legislature*, but by rights wholly distinct.

" The spiritual lords had dignities, but they were spi-
" ritual, not temporal, and they were summoned to the
" common council of the realm, not as spiritual dignitaries,
" but as *temporal lords of lands, denominated baronies.*
" The earls were not summoned *as earls* but *as barons*, in
" the distinct character of *tenant in chief of lands*, a cha-
" racter *common to all the other* members of the common
" councils of the realm, according to the provisions of the
" charter of John. The tenants in chief could scarcely

" be supposed to have all had dignities, merely as tenants, " for their dignities *must have ceased*, if they *lost their* " *lands*."

" The division of the two houses was made at the end " of the reign of Edward the First, but not fully de- " veloped till afterwards. The declaratory statute of 15 " Edward II. did not distinctly set forth the character, " powers, and privileges of the different estates of the " parliament."

" During the reign of Henry the Sixth, there seems to " have been particularly a degree of confusion of principle " with respect to rights to the dignity of peerage, and " even with respect to the rights of those possessed of that " dignity, which has produced much embarrassment in " prosecuting the inquiries entrusted to the several com- " mittees."

" The act of parliament (31 Henry VIII. c. 10) de- " termined by express law, the precedency of the peers of " England, of the same degrees of dignity, which seems, " *during the reign of Henry the Sixth*, to have been, in " many instances, varied according to the *mere will of the* " *crown*."

Resolutions on the journals of the peers, 1st Feb. 1640: " That no person, that hath any honour in him, and a " peer of this realm, may alienate, or transfer the honour " to any other person."

" That no peer of this realm can drown or extinguish

" his honour, (but that it descend to his descendants)
" neither by surrender, grant, fine, nor any other con-
" veyance to the king."

Judge, Sir John Dodderidge, in giving the opinion of the judges, said—

" If a man be created an earl, to him and his heirs, all
" men do know, that although he have a fee simple, yet
" he cannot alienate, or give away his inheritance, be-
" cause *it is a personal dignity, annexed to the posterity,*
" and *fixed in the blood.*"

" The earldom of Oxford, created by the empress Ma-
" tilda, or king Stephen, a *personal dignity*. This was
" the dignity under consideration."

A peerage, is an inheritance not communicable to any other, by any title *founded on possession;* there is no *possessio fratris* of our honour.

" It may be well doubted, whether in the 13th Edward I.
" the dignity of an earl, or even a baron, as a *name of*
" *dignity,* was considered as an incident to land, either by
" prescription, or a condition of tenure."

" It has long been decided, that no husband can be
" tenant by courtesy, of a dignity vested in his wife, and
" the heirs of her body; and it may be doubted, whether
" such tenantry by the courtesy of a dignity was *ever* al-
" lowed *as a right,* though the crown has given the dig-
" nity by special summons, or other mode of grant, to the
" husband, in the lifetime of his wife."

Whoever has claimed a dignity, has sued for it to the crown by petition, which is in the nature of a *petition of right.* There can be no discontinuance of a dignity.

No reversion of a dignity remaining in the crown. On ceasing of heirs, it becomes as if it *had never been.* A dignity given to a second person and his heirs, on failure of the first grantee, *a distinct creation.*

" That by law, in all cases, it is at the king's election " and pleasure, whether *a service reserved by tenure,* " *shall be performed or not,* that he may *refuse,* as well " as *require* such service." And further, " considering " that for many ages, the right to demand a writ of sum- " mons to parliament, as a writ of right, founded on ser- " vice reserved by tenure, has not been acknowledged, " and the existence of such right was expressly denied by " high authority, in discussing the claim to the dignity of " Fitzwalter, in the reign of Charles the Second; and it " may be doubted, whether even the right of *special pre-* " *scription,* on which the claim to the dignity of earl " Arundel, was founded in the reign of Henry the Sixth, " is consistent with the *present constitution of the peerage* " *and of parliament,* or with the acknowledged law, that, " by the dignity of peerage, the blood of the person ob- " taining that dignity is ennobled, that he can by no act " (except by forfeiture) destroy his title of dignity, or " prevent its descent to others, and that he holds his dig- " nity as a peer of the realm, not for the benefit of him- " self alone, but for the benefit of others as a public trust; " so that *peerage* by *reason of tenure,* either as the obliga- " tion of a service reserved, or as a *prescriptive right,* in-

" cident to the tenure of land, (which is in effect the same)
" is inconsistent with the character of peer of the realm,
" as now generally understood, and as specially declared
" by resolution of the house."

The obligation by tenure to perform any service, was not *the cause* of summons to the common council in the time of John, but the necessity of having *the consent of the party* to the *imposing a tax or charge.*

The judges in the reign of Charles II. were of opinion, that peerages by tenure *did not then exist.*

Upon what ground did the assertion, that there did *anciently* exist dignities of peerage by tenure, rest?

First—That after the Norman conquest, lands were granted by the crown, having the service reserved of attending the king's great council, (when summoned) and that the titles of earl or baron were annexed to such service, according to the pleasure of the crown, or were incident to the tenure of particular lands, holden by the persons who had such titles, and who were bound to perform such services.

No evidence is to be found of the express reservation of the service of a baron, or of attendance on the king's court or great council of parliament, in any grant of land. Military service is reserved in many and in most grants, and services by *grand serjeantry* are extant on record. But no grant, charter, or inquisition, imports a reservation of the service of attending the king's court, or his

council, or his great council, or parliament. Attendance on the king's court, as a court of justice, may have been deemed incident to immediate tenancy of the crown of a particular description, as the immediate freehold tenants of a manor were bound to attend the court of the lord of the manor, as an incident to the tenure of their respective lands, holden of that manor. Persons holding particular lands immediately of the crown, may also have been bound, as such tenants, to attend the king in his supreme court of justice, which may have been deemed *the great court baron* of the kingdom. And from passages in different ancient writers, it seems highly probable, that certain persons, more especially termed *the king's barons*, including the earls, were members of the *king's supreme court of justice*, the constitution of which, however, is involved in some obscurity.

"This duty may have been particularly due from those
"who held immediately of the crown lands *called baronies*,
"whose tenure may, therefore, have been called tenure
"*per baroniam*, and the committee have been unable to
"discover in what tenure *per baroniam* was distinguish-
"able from *other tenure by military service*, unless the
"king's tenants *per baroniam were deemed the suitors* in
"his great court of justice, and the other immediate mi-
"litary tenants of the crown *were not deemed suitors of*
"*that court*, though unquestionably required to be sum-
"moned to a great council of the kingdom, according to
"the terms of the great charter of John."*

* Tenure by barony in France had specific rights, larger and more extensive than in England, see page 27.

By the constitutions of Clarendon, it appears the clergy were bound to attend the king's great court of justice, *because they held certain lands sicut baronias.* The lands of the earls were also styled or denominated *their baronies*, and the dignity of earl appears to have been *a mere name of dignity*, annexed to the person of the grantee, and his heirs under the grant.

None of the English earls mentioned in Domesday, had any local name annexed to their name of earl, which was *solely* their *name of dignity.*

When lands holden "*per baroniam*," were divided amongst coheirs, if a personal service was to be performed in respect of such lands, it must have become necessary to ascertain *by which, of several persons, such service was to be performed.*

In the duke of Buckingham's case, respecting lands held by the service of being constable of England, it was clearly held, by the judges in the 6th of Henry the 8th, that the king may at his election or pleasure *compel or refuse a service due by tenure,* and at that time the king did *refuse the service of constable.* The king might, therefore, have compelled or refused the service of tenure by barony, *as a service*, though he might not lawfully refuse the discharge of a *public duty;* and it would only be, therefore, as a *public duty* that any person could have demanded, as a right, a writ of summons to parliament in respect of the tenure of lands.

"On the whole, it seems difficult to connect with tenure,

"*per baroniam*, that dignity which is now the dignity of "a peer of the realm, in or after the reign of Edward the "First, if before."

"In the 19th of Edward the Second, Thomas de Fur- "nival complained to the king, that though he was *not* "*a baron, nor did hold* his land *by barony*, or by part of "a barony, yet he had been amerced as a baron, *against* "*the law and custom of the realm.*"*

"It is evident from this transaction, that writs of sum- "mons to parliament *were not*, in the reign of Edward II. "*considered as rendering any person a baron*, for the "purpose of being amerced as a baron; for Thomas de "Furnival was summoned to parliament in the 23d of "Edward the First, and in several subsequent years of "that reign, and in that of Edward the Second, and to "the 6th of Edward the Third, when he died, and his "son was summoned. It can scarcely be imagined also, "that when Thomas de Furnival, *(evidently a peer or* "*lord of parliament)* insisted in the 19th of Edward the "Second, that he *was not a baron*, he meant any thing, "but that he was not a baron by reason of *tenure by* "*barony, or part of a barony.* He and his advisers, "and the king and his council, and the Court of Ex- "chequer, must have conceived that his writ of summons "to parliament, had not issued *as writs of right by reason* "*of tenure*, but as *matters of grace and favour of the* "*crown;* for disclaiming to hold by barony, Furnival *dis-*

* He was a peer but denied being a baron.

" claimed any right to be summoned by writ to parlia-
" ment, by reason of tenure by barony."

William de Braose, who held Brembre as an honour, and whose father had been summoned to parliament, pretended that he did not know that he held his *lands by barony*. He was, however, made to pay his relief of one hundred marks for his barony of Brembre. His father *had been summoned to parliament*, which is a proof, that tenure by barony had no *necessary connection* with *legislative functions ;* a baron might be bound to attend a parliament, if summoned, while those who did not hold by barony could not be amerced for neglect or refusal.

Joan de Benn, of Midhurst, (2 Edward II.) complained that she had been assessed as a baroness, though she held nothing by barony, and obtained a writ for relief.

EARLS.

Earls were always *by creation.* " William de Warren,
" in the charter to the priory of Lewes, says—'Ego Willūs
" de Warrena, *Surreie comes*, &c. pro salute anime mee et
" anime Gundrade uxoris mee, et pro anima domini mei
" Willi. Regis, qui me in Anglicam terram adduxit, &c. &c.
" hanc cartam feci, et qui *me comitem Surregie fecit*,' &c.'"*

" *Earls*, under the Saxon princes, were official, having
" authority, civil and military, in the shire, county, or dis-
" trict, of which he was earl. In Domesday, the earls are
" called by their christian names only, with one instance to
" the contrary, in which Godiva is called wife of Leofric,

* Chartulary of the Priory of Lewes.

" *earl of Mercia,* which seem to import, that at the time " of the compilation of that work, the idea of a territorial " dignity, corresponding with the territorial dignities of " *comes* or *count* in France, was not prevalent in England."

" In the 15th of Edward III. the dignity of earl was " not considered as necessarily annexed to the possession " of a territorial honour, and that the *mere grant* of the " territorial honour, would not have given the grantee the " *dignity of earl.*"

" Joan, sister and heir of John, duke of Britanny, and " earl of Richmond, who had forfeited the earldom on " his death, being then the wife of Ralph Basset, obtained " a grant of the castle, *earldom, and honour of Richmond,* " without any words of inheritance. She never assumed " the title of *countess of Richmond.*"

The town of Richmond in Yorkshire, was created a borough by the earl of Richmond, and was the *borough of a subject.**

Edmund of Hadham, was *created earl of Richmond,* and to enable him to sustain the dignity, he had afterwards a grant, " *Totum comitatum, honorem,* et *dominium Rich-* " *mondiæ,* alias de Richmond."

The grant of an *honour denominated an earldom,* certainly did not make the grantee an earl, unless the grant contained words of creation to that dignity.

* As were many towns in the palatine counties of Ireland.

" It seems, therefore, that the proceeding on the claim " of the dignity of earl of Arundel, in the reign of Henry " the Sixth, *ought to be considered an anomaly*, in- " fluenced perhaps by political views, and decided, ap- " parently, without much discussion, and *without the as-* " *sistance of the judges*, who seem, when their opinion " was afterwards asked upon the question touching pre- " cedency, to have considered the decision in favour of the " claim as an *act of authority in parliament, which pre-* " *cluded all question.*" The claim of the dignity, indeed, was advanced *on singular grounds*, not as a *general assertion*, that a territorial property, which had *given name of earl to a former possessor*, would *in all* cases, give the dignity of earl to another; but that, for time, whereof memory was not to the contrary, ALL, who *had had that particular territory*, had *had also the dignity of earl*, and, therefore, inferring that the dignity of earl was, for some reason not stated, to be deemed *incident to the possession of that particular territorial property*. The *assertion of fact seems not to have been true*, and not to have been made the subject of inquiry at the time of the decision.

" The decision on the claim of the earldom of Arundel, " probably gave ground for the extraordinary letters " patent, afterwards granted by Henry the Sixth, to John " Talbot, in respect to his seizin, of the manor of King- " ston Lisle, which was founded on an assertion *not true*, " viz. that Warren de Lisle, and his ancestors, had been, " *by virtue of their seizin of the manor of Kingston* " *Lisle, barons of the realm*, by the title of lord Lisle.' This manor *was not even held of the crown.*

The Committee "apprehend, that the grant of those "letters patent, *founded on a false assertion,* may tend "*to discredit proceedings in the reign of Henry the Sixth,* "when first a long minority, and afterwards the weakness "of the king and the contest of parties, may be supposed "to have enabled persons possessed of great power and "influence, to obtain from the crown what in other times "and under a firmer government might not have been "conceded."

"The patent of Edward the Third, granting to the "Black Prince the earldom of Chester, shews that then a "title in abeyance among coheirs, was considered as hav-"ing devolved to the crown, and to be at the king's dis-"posal. '*Plurimis itaque* gradibus hereditariis in regno "nostro cum per descensum hereditatum, secundum legem "regni ejusdem, *ad coheredes et participes* tum deficiente "exitu, et aliis eventibus variis, *ad manus regias de-*"*volutis.*'"

"In the reign of Edward the Third, the dignities of "marquis and viscount had not then been given, and the "dignity of baron does not appear to have been then con-"ferred by patent, *or in ANY MANNER, except by* "*writ of summons to parliament,* whatever may have been "the effect of such a writ, as giving to the person to "whom it was directed, any right beyond the duty which "the writ required him to perform in obedience to it."

"Richard the Second advanced Henry Percy, one of "the barons of the realm, to the dignity of earl of Nor-"thumberland, by patent, to him and his heirs. To this

" patent was added an extraordinary clause, declaring the " king's will, that *all the castles, lordships, manors, lands,* " *tenements*, which Percy held by hereditary right, or by " his own acquisition before had and possessed, or should " thereafter have and possess, *sub honore comitatus et tan-* " *quam parcellæ dicti comitatus* (jure aliorum in omnibus " semper salvo) *deceteri teneantur sicut predictum est.*"

" It is difficult to conceive what was the meaning of " this extraordinary provision in these letters patent." Percy held lands in chief of the king in Yorkshire, Northumberland, and Petworth, in Sussex, which last he *held of the honour of Arundel*, all which, saving the right of such mesne lords, he was to hold *as his county*.

If we consider the *comitatus a territorial liberty* the meaning is obvious, viz. that the earl should have the same cognizance of pleas, or more familiarly speaking, *manorial rights* over all his lands, as he had in any of them, or in his barony of Alnwick. It was common in early times, to grant by new patents to the great landed proprietors the same liberties and jurisdiction over their newly acquired possessions as they had over their old estates, in other words, to make them *part and parcel of their honour or barony*. Many instances of this occur on the ancient rolls, and this *earldom*, or *comitatus*, meant nothing more than an honour, or extended manor, having cognizance of certain pleas.

" Except, therefore, as the counties palatine, and the " castle and honour of Arundel, may be deemed excep- " tions, it might be concluded, that no person, after the

"completion of the Norman conquest, had *the dignity of* "*earl by tenure of land in England.*"

This must refer to the *dignity* of earl, as a *member of the legislature;* but it is contended, that neither of the titles of earl or baron, had in their origin any connection with legislative functions.

Upon review of the whole subject, the committee are induced to conclude the dignity of an earl in England, was a personal dignity.

"The committee have found no instance in which the "dignity of earl was treated in any patent, as incident to "the tenure of land, and the contrary is to be inferred "from the creation of Laurence Hastings, earl of Pem-"broke."

"Earls sat in the early parliaments, when convened "for the purpose of granting aids to the crown, by reason "of their baronies, and not by reason of their dignities of "earls."

"From the time, therefore, *whatever time that was*, "that *all* the tenants in chief of the crown, were not re-"quired to be summoned for the purposes specified in the "charter of John, and all those, to whom special writs of "summons to parliament were not issued, were repre-"sented in the legislative assembly of the realm by elected "delegates, those to whom special writs were directed, "sat in a distinct house, under the authority of those "writs; and the right of any person to sit in that house,

" depended either on the favour of the crown, or on his " right to demand such writs. It has been conjectured " that a law was at some time made, giving to the crown " a discretionary power on that subject. *Of such a law,* " *the committee could find no trace. Such a law could* " *not have been made prior to the first charter of Henry* " *the Third.*"

" The constitution of the commons house of parliament, " is inconsistent with the charter of John."

" All the more ancient laws, of which any evidence re- " mains, import that they were made by the king, *by the* " *advice*, and, therefore, with *the consent* of his barons."*

" It seems evident, that Henry the Third and Edward " the First, exercised a discretionary power, in directing " special writs of summons to their parliaments, and from " their time to the time of Henry the Sixth, the whole " tenour of the evidence examined by the Committee " tends to show, that the *dignity of a peer of the realm* " was considered *a personal dignity derived from the pre-* " *rogative of the crown*, the *dignity of earl* depending, " either on evidence of actual creation by patent, or on " a prescriptive right to the dignity, derived from im- " memorial hereditary succession to that dignity ; the dig- " nity of a baron, *depending on the king's writ of sum-* " *mons*, and prescriptive right derived from continual " summons importing hereditary title, the sitting in the

* They much more frequently import that they were made by the king, by the advice of *his council.*

"parliament under the authority of a writ of summons,
"being also latterly considered *as giving an hereditary*
"*right to continual summons.*"

"Though the tenure of land by barony, probably gave
"to the possessor a *right to be summoned to the common*
"*council of the realm*, and to be a member of the king's
"high court of judicature in parliament, in respect of
"such tenure, before and in the reign of John; *changes*
"*in the constitution of the common council of the realm*,
"after the charter of John, and probably during the reign
"of Henry the Third, have had the effect of giving to
"*the dignity of a peer of the realm* a character, different
"from that which probably belonged to those to whom,
"by the charter of John, special writs of summons to a
"common council of the realm were required; and, at the
"same time, *put an end to the right of any other tenants*
"*in chief of the crown*, to be summoned to such council,
"by reason of tenure in chief of the crown."*

"If the rights which, in the reign of John, belonged to
"those styled in his charter earls and greater barons,
"could be considered as *still in existence*, it should seem
"that the rights of *all other* tenants in chief of the
"crown, recognized by that charter, *ought to be consi-*
"*dered as remaining;* which would be *utterly inconsistent*
"with the present constitution of the legislative assem-

* It was the right of every tenant in chief of the crown, as well a knight as a baron, to give his assent to a tax, either individually or by his proxy in the common council, or in some other manner, but neither had any *right* to demand a participation in legislation on other subjects.

" blies of the realm. There seems ground for concluding, " that *both are no more;* and that as all tenants in chief " of the crown, who are not now lords of parliament, are " represented in parliament, by those who sit in the com- " mons house of parliament, and the distinct rights of all " such tenants in chief have been abrogated, without any " distinct law for the purpose, as far as can be now dis- " covered; so the right of any person to claim to be a lord " of parliament, by reason of tenure, either as an earl or " a baron, supposing such right to have existed at the " time of the charter of John, may be considered as also " abrogated by the change of circumstances, without any " distinct law for the purpose."

" Henry the Third, reckoned two hundred baronies in " his time. But there was no claim of a seat in parlia- " ment in right of these baronies.

" The peerage of Mowbray, as a barony by writ, was " allowed *precedence of all the other baronies*, who must " all, therefore, *have been considered barons by writ.*

" To these considerations add the fact, that persons " charged by officers of the crown, as holding by barony " in various instances, after the reign of Henry the Third, " *denied that they held by such tenure;* and particularly, " that Thomas de Furnival, a man of large property, and " who *had summons to parliament by writ*, and, therefore, " *had the dignity of baron*, asserted (though falsely) that " he *held nothing by barony*, and therefore *asserted in* " *effect*, that his seat in parliament *did not depend on* " *tenure by barony*, but *on his writ of summons;* it seems

" difficult (therefore) to withhold assent to the opinion of
" those distinguished persons who advised the crown, on
" the claim of the dignity of lord Fitzwalter, in 1669,
" '*that barony by tenure had been discontinued for many*
" *ages, and was then not in being, and so not fit to be re-*
" *vived, or to admit any pretence of right to succession*
" *thereupon.*' "

" In, and after the 23d of Edward the First, the ancient
" constitution of the legislature *wholly by tenure, was,*
" *therefore, no longer prevalent.* And that no person was
" deemed entitled to demand, *as a right,* a writ of sum-
" mons to parliament, as a peer of the realm, by reason of
" tenure, but that all were considered as entitled to that
" dignity as a *personal* right, either by express grant of
" the crown, or by usage, creating a prescriptive right in
" its nature, *personal* and not *territorial.*"

" The assertion of those who advised Edward the First
" in point of law, on the question submitted to him with
" respect to the succession of the crown of Scotland, im-
" porting that the *dignities of earl and baron* were not
" *partible inheritances,* could only be applicable to a *per-*
" *sonal right,* and various other proceedings in that reign
" were *inconsistent with the existence of a right to the*
" *dignity of a peerage by tenure.*"

The committee conceive that they have fully shown,
" That many dignities supposed to have been long extinct,
" ought, according to modern rules, to be deemed to have
" descended to sole female heirs ; that others ought to be
" considered as having descended to coheirs, and still rest-

" ing in abeyance, capable at any distance of time, of
" being called out of abeyance by the power of the crown,
" though they have long been considered as utterly ex-
" tinct and gone, and the crown has, on the supposition
" of the extinction of such dignities, granted new dig-
" nities by the same name to others, which must be deemed
" to have been in derogation of the rule asserted in Sir
" Richard Verney's case, except as the *name* of dignity,
" may be considered as not *constituting the dignity, two*
" *dignities* of the *same degree* and of the *same name*
" might exist at the *same time* with *different rights of*
" precedence."

" The name of earl was expressive of a *degree of dig-*
" *nity*, under the Saxon government, and was afterwards
" considered as equivalent to the Norman word *count*,
" rendered in Latin by the word *comes*, but the word
" baron is supposed to have been introduced by the Nor-
" mans, and when used as a name of dignity as equivalent
" to the Saxon word *thane*. But the word *baron*, as in-
" deed the Saxon word *thane*, seems to have been used in
" different senses. In its most extended sense it applied
" to all *men* as distinguished from *women*, all who held
" freehold lands of a seignory, were called *barons of that*
" *seignory*, thus the freehold tenants of a manor were
" deemed the *barons of the manor*. Every person hold-
" ing by freehold tenure immediately of the king, *as of*
" *his crown*, was deemed in some sense *the king's baron*.
" But though thus extensively applied, in its more confined
" sense it was a name of dignity, and often included per-
" sons having the dignity of earl. King John, in his
" charter to the church, in his fourteenth year, styled the

" earls of Salisbury, Boulogne, Warren, and Ferrars,
" *hi quatuor barones nostri.*"*

" Bracton, who wrote in the reign of Henry the Third,
" comprehends all the laity of England, under the de-
" scription of *earls*, *barons*, *vavasors*, *knights*, *freemen*,
" and *slaves*. He describes earls created by kings,
" *ordinantes eos in magno honore et potestate et nomine*
" *quando accingunt eos gladiis*, words which import crea-
" tion by the king, and the act of girding with the sword,
" as the act of giving power and rank, appear to have
" been long used as a ceremony on the creation of an earl.
" It is observable, that Bracton, in stating the effect of
" that act of the king, includes their *name*, *or title of*
" *dignity*, as *proceeding from that act*. Of barons,
" Bracton says, 'sunt et alii, potentes sub rege, qui di-
" cuntur barones,' but he uses no expression importing
" the *origin of their dignities;* and though he attributes
" to them power under the king, he does not attribute to
" them a *name of dignity*, derived from any ceremony, as
" he does with respect to the earls.

" Of *vavasors*," he says, " *sunt et alii qui dicuntur va-*
" *vasores viri magnæ dignitatis.*"

" Of *knights*," he says, " *sunt et sub rege milites ad*
" *militiam exercendam electi ut cum rege et supradictis*

* There seems little ground for doubting that all those who were deemed the king's barons, in the sense in which the four earls above named were so styled, were persons holding lands immediately of the king, *as of his crown*, and that their appellation of baron was in some sense a *name of dignity connected with the tenure of land.*

"*militent et defendant patriam et populum dei.*" He speaks, therefore, of knighthood as a mere dignity, connected with the military character of those on whom it was bestowed.

"He then adds, '*sunt etiam sub rege liberi homines et "servi ejus potestati subjecti.*' "

"A *vavasor* has been considered as a person holding "land by subinfeudation, and the laws of Henry the "First has been used, as authority, for the assertion. "According to those laws, if a question of boundary arose "*between the king's barons,* (which word *baron* here ex- "tends to *all* the king's tenants in chief) the question "was to be decided in *the king's court;* but if the dispute "was between the *vavasors of two lords*, it was to be de- "cided in the *county court;* hence Selden concludes, that "the appellation of *vavasor*, was properly applicable to a "tenant by subinfeudation, and was *feudal* only, not "*honorary.* But it can scarcely be supposed that Brac- "ton used the word as applicable only to tenants by sub- "infeudation, as he afterwards uses the words, '*magnates "sive vavasores*,"* and calls them '*viri magnæ dignitatis*,' "and ranks them next to barons, and before knights. "In another part of the same treatise, he says, that a "husband cannot endow a wife of a manor, '*si sit caput "baroniæ*,' if he has other manors which are not '*capita*

* Geffery de Geneville, styles the *barons* of his palatine lordship of Meath, *magnates mei Midiæ*, which is perhaps an unusual application of the word *magnates*, but still it shows Selden's interpretation of the word to have been correct, for these magnates were tenants by subinfeudation, and yet were styled barons.

"*baroniæ,*' and adds, '*quod dicitur de baronia, non est* "*observandum in vavasoria* vel aliis minoribus *feodis* "*quam baronia*, quia caput *non habent sicut baronia, et* "*quod dicitur de baronia et barone servari debet in comi-* "*tatu et comite.*' From this passage it rather seems that "he did not include in the word *baro,* every tenant in "chief of the crown, but only such as held a *barony,* and "that he considered all other freehold tenures, whether "immediately of the crown, or by sub-infeudation, as va- "vasories or other minor fees."

"It seems, therefore, that Bracton meant by the word "vavasores, persons of a certain degree of dignity, not "equal to that of baron, but superior to others, the supe- "riority being not properly personal, but arising out of "the extent or value of their lands, however held."

It is probable that the word *vavasor* may have also meant what we call a *lord of a manor* held by sub-infeudation, having courts leet and barons, but not cognizance of higher criminal pleas, as infangthef, outfangthef, &c. &c. or *criminal jurisdiction,* or, as Bracton has it, "*potentes sub rege.*"

"Bracton was written *before the house of commons* "*existed,* and before tenants in chief of the crown, were "disabled from alienation, without licence from the "crown."

"From the book called the *Dialogue of the Exchequer,* "it appears that earls were created by the king, either "hereditary or personally at his pleasure."

Littleton (who lived in the reign of Henry IV.) in his treatise on tenures, does not mention *tenure by barony*, although he speaks of tenure by *knight's service*, and by grand serjeantry. If *tenure by barony* had, when he wrote, been considered as a tenure, giving those who then held by such tenure the powers and rank of a peer of the realm, it can scarcely be imagined, he would have omitted to notice a tenure, to which so much importance must have been attributed, when the crown granted that dignity as a matter of high grace and favour. He says, *tenure* by *homage, fealty, and escuage*, is tenure by *knight's service*. Tenure by *grand serjeantry* by some *special service* done to the king, but he does not mention *the service of attending the king in his council, or in a common council of the realm, as a service of grand serjeantry, or as any service due in respect of the tenure of land.*

The ancient commentary on the law of England, called "*Fleta,*" speaks of tenure by grand serjeantry, in similar language with Littleton. In speaking "*de feodo militari, vel magnæ serjeantiæ,*" says, "*quæ sibi æquipollens,*" attributing no superior dignity to grand serjeantry.

It may also be observed, that notwithstanding the proviso in the act, taking away the court of wards and liveries and tenures, in capite, by knight's service, (12 Car.II.c.24) "That that act should not infringe or hurt any title of "honour, feudal or other, by which any person had, or "might have right to sit in the lords house of parliament, "and the privilege belonging to them as peers," was framed by those who, a very short time after, advised the crown in the decision of the case of Fitzwalter, were of

opinion that, "*baronies by tenure were not then in being,* "*and did not then give a right to a writ of summons to* "*parliament.*"

The *appellation of barony* in the charters of John, and Henry the Third, was applied to certain lands, held immediately of the crown, in the possession of *the earls*, as well as those in the possession of *barons*, and the relief paid by the former, was for his *barony* of an earl, although he paid a higher sum than was paid by a baron.

The statement in the report of the Lords Committees of the 12th of June, 1819, seems to shew—"That it was "highly probable, that *all* tenants in chief of the crown, "*as of the crown*, by military tenure, whether *dis-* "*tinguished by names of dignity or not*, or whether "*holding by barony* or not, were in the reign of John, "equally entitled to be summoned for the *particular* "*purposes* mentioned in that charter," viz. "*for assess-* "*ing extraordinary aids to the crown, and for scutage.*" "It seems to follow, that the constitution of the legislative "assembly of the realm, *for* other purposes, was not con- "sidered as an object of equal moment; and it is not im- "probable, judging from many documents, that legislative "authority was generally assumed by the crown, with the "advice of a council of a more limited description, in cases "*not tending to impose charges on the subject.*"

"It was not till the time that the lords spiritual and "temporal, and the representatives of counties, cities, "and boroughs, formed *two distinct houses* of parliament, "*that any document has been found describing persons as*

" *PEERS or LORDS of parliament.* At that time the " greater number of the tenants in chief of the crown, " were so far from claiming writs of summons as peers, " that many of them served as representatives in the " commons.

" It is also clear, that the very ancient peerages of Ros, " Clifford, Despencer, and Fitzwalter, must now be con- " sidered as dignities merely personal, derived from writs " of summons to parliament, and *from such writs only*, " *whatever may have been the origin of the titles* of the " persons who first sat in parliament under those writs; " and all claims of those dignities in future, *must be* " *founded* on a prescription merely personal, derived from " the *first writ* appearing on record, to have been issued " to the ancestor of the claimant, whose heir, according " to that record, *the claimant must be.*

" This is most clearly illustrated by the decision on the " peerage of Fitzwalter, in which case the king in coun- " cil was advised.

" That whatever *pretence* there might be for presuming " that *there were originally baronies by tenure*, yet that " baronies by tenure had been discontinued for many " years, and were then not in being, and so not fit to be " revived, or to admit any pretence of right of succes- " sion thereupon; and that *the pretence* of a barony by " tenure *was*, *therefore*, *not to be insisted on.*"*

* In this dictum it is evident, that the judges understood *barony* and *peerage* to mean the *same thing*, but had they considered the

The claimant was heir of Robert Fitzwalter, general of the barons, who compelled king John to sign his great charter, and undoubtedly one of the *barones majores*, within the meaning of that charter. But the claimant could show no writ of summons to parliament, of any of his ancestors, *before the reign of Edward the First*, and he took his seat, *and was placed as the junior baron* of that reign, saving his right. He was, therefore, ranked as *a baron by writ.*

The dignities of Ros and Despencer, are now held under the writs issued, 49 Henry III. which have been, and are considered to have given personal and hereditary dignities, or were evidence that those persons were entitled to such dignities, which fact *may warrant a conclusion,* that the 49th of Henry III. barons no longer sat in parliament *as barons by tenure*, but were summoned according to the discretionary power of the crown, or those by whom that power were then held, and all other tenants of the crown, whether holding by barony or not, were considered as represented by the knights who were elected by the several counties.

" The right of the crown to require *personal aid and* " *counsel*, was a burden which extended *to all subjects* " indiscriminately, except that the clergy claimed an " exemption from those burdens incident to their sacred " character." But the clergy who held lands by military tenure, or by barony, were bound to perform the same

true meaning of the former word, they would have said that peerages by tenure never existed, rather than that baronies by tenure *had been discontinued.*

services which laymen holding the same lands would have been bound to perform. Some who *held by barony*, claimed to be exempted from the duty of attending the king's parliament *by custom*, alleging that their predecessors *had never performed that duty*, and that, therefore, they had a prescriptive right to be relieved from it.

"The right of the crown to the personal aid and coun-
" sel *of all its subjects*, still remains, as it must always
" have been, in the discretion of the crown to require it
" or not, unless, as is the case of the peers, an individual
" had received, by himself or his ancestors, a right to re-
" quire the crown to receive his aid and counsel. This
" right also belongs to the archbishops and bishops, in
" right of their temporal possessions, of which they must
" receive investiture before their right accrues. The
" archbishops and bishops, may still be deemed *lords of*
" *parliament by tenure;** but they are not esteemed *peers*
" *of the realm*, which is *now considered* as a dignity en-
" nobling the blood of the holder, and an indelible cha-
" racter in the person to whom it belongs, unless lost by
" forfeiture, or taken away by act of the legislature."

* It would, perhaps, be more correct to say, that on the establishment of legislative parliaments, it was considered expedient, that the church should be represented, and, therefore, the archbishops and bishops were summoned thereto, than that they were lords of parliament *by tenure;* many, if not all of them, held by barony, and, therefore, were bound to attend the king's ancient council, or *aula regis*, and were, therefore, persons of high distinction and influence. They had baronial jurisdiction in their liberties, and were considered barons, but scarcely lords of parliament by tenure.—See *post*, pp. 205–6.

" By the charters of the Conqueror, Henry I. Stephen,
" Henry II. and John, the tenants of the crown by mili-
" tary service, were exempted from any charge *beyond the*
" *stipulated services of their tenures, without their consent.*
" If, therefore, the king required from them *an extraor-*
" *dinary* aid or service, their consent was necessary to le-
" galize the assessment, and for the purpose of obtaining
" such consent, a general assembly of such tenants *must*
" *have been necessary.*"

" The committee have discovered no ground for sup-
" posing that the dignity of a *peer of the realm, as now*
" *understood,* was ever considered as belonging to *all the*
" *persons* who held in chief of the king, as of his crown
" by military service. And they have found no trace of
" the *application of that tenure* to all such tenants, or *to*
" *any person* previous to the time when the legislative as-
" semblies of the country were composed *of two distinct*
" *bodies,* having separate and distinct characters, rights,
" and privileges. The *dignity of peerage,* therefore, *as*
" *now understood,* seems to have a character *distinct from*
" *any thing,* which existed before the appearance of all
" the commons of England in parliament, by elected re-
" presentatives; and what may have warranted a demand
" of *a special writ* of summons to an assembly of all the
" military tenants of the crown, convened for the purpose
" of imposing the burthens specified in the charter of
" king John, *may not be considered* as necessarily war-
" ranting a demand of a writ of summons to the general
" legislative assemblies of the realm, as those assemblies
" are now constituted, when the effect of the writ would
" be *to place the person so summoned in a distinct house*

" of parliament, amongst a *distinct order of men*, and to
" make him a member of a distinct estate of the realm,
" having peculiar personal character, rights, and privileges,
" and constituting him a *peer of the realm* and a *lord of*
" *parliament*. This seems to have been the view which
" the privy council of Charles the Second, had of the
" subject, when they declared, '*that whatever pretence*
" *there might be for presuming that there were originally*
" *baronies by tenure, such baronies had been discontinued*
for ages, and were then not in being;' meaning evi-
" dently to refer to the dignity of a baron *as then enjoyed*
" *by peers of the realm*, which was *the dignity then*
" *claimed.*"

" The charters of John, Henry III. and Edward the
" First, demonstrate, that the constitution underwent a
" great change between the accession of Henry the Third,
" and the end of the reign of Edward the First. For the
" charter of the latter, though professedly copied from that
" of 9 Henry III. differs in language and import, from
" all the charters of Henry, omitting, however, as the
" charters of Henry had before done, the special clause
" in the charter of John, for the convention of *a great*
" *council for assessing aid and scutage.* When the char-
" ter of Edward the First was obtained, that clause would
" have *been inconsistent with the constitution of the legis-*
" *lative assemblies of the realm then clearly established,*
" and its insertion would have been rejected *as a gross*
" *attempt to violate the established constitution of the go-*
" *vernment of the realm.*

" From documents after stated, (*in the Report*) it ap-

" pears that *distinction* was made between *lands consti-*
" *tuting a barony*, and *lands holden per baroniam*, and
" that *a barony* might owe the service of *only two knight's*
" *fees.*" From the language of the charter of John, it may be conjectured, that those who held *baronies*, and perhaps those who held *by barony*, though they have not *entire baronies*, were intended to be distinguished in that charter by the appellation of "*majores barones*," and from this it may be implied that the other immediate tenants of the crown by military service, might also be *deemed barons*, though "*barones minores.*" But if those who held baronies, or by barony, *were alone suitors to the king's great court*, it is evident from the charter of John, that the *king's great court had no power, as such*, to grant extraordinary aids to the crown; that charter requiring other tenants in chief to be summoned for that purpose, to form the "*commune concilium*," *by which such aid might be granted.*

" Whatever the distinctions may have originally been
" between lands holden as a barony, or by barony, and
" lands holden immediately of the crown by knight's ser-
" vice simply, those distinctions seem to have been, in
" some degree, unfounded or misunderstood in the reigns
" of Edward the First and his immediate successors, and
" were then, apparently, little considered, except for the
" purpose of assessing reliefs on succession to baronies and
" parts of baronies, and for the purpose of settling fines,
" by way of amerciament, on persons holding by barony.
" This fact seems to afford a strong ground for presuming
" that *holding by barony*, did *not* in the reign of Edward
" the First, *entitle* the person *holding by such tenure*, to

" demand as a right, a writ of summons *to parliament* as " a baron ; and that all the persons summoned in the reign " of Edward I. were summoned *by favour of the crown*, " or in consequence of a *prescriptive personal right gained* " *by usage.*"

" Majores barones in the charter of John, meant merely " the *most considerable of the barons.*"

" Some of the lands *called baronies* were held *as of an* " *escheat.*"

The earliest record of summons to parliament, 49 Henry III. only eighteen laymen were summoned. Their history is traced in the report; but it is not necessary here to repeat it.

" From this statement, it seems highly probable, that " *no great regard was paid to tenure, in the selection of the* " *persons to whom writs of summons were then issued.*" The *descendants of some were never summoned to parliament*, or not till after an interval of many years, and the only dignities now enjoyed under these writs of summons, are enjoyed *as personal dignities*, by the descendants of Le Despencer and Ros.

The proceedings which produced the restoration of the dignity of Le Despencer in the first year of James the First, demonstrate, that there was little adherence to *principle* in those proceedings, of which the result seems to have been a sort of compromise between the contending parties. When the lords proposed to leave to the king

the choice to which of those parties the dignity of Bergavenny should be given, they must have considered *both dignities personal*, and when they put it to the vote to which the title of Bergavenny should be given, they must have considered *that dignity personal*, for otherwise, it could not belong to lady Mary Fane, who had not the *territory of Bergavenny*, which was enjoyed, under an entail, by her opponent. When they proceeded to determine the *precedency* of the two dignities, and decided in *favour of Le Despencer*, they must have also considered *both dignities as personal*, for *if the territory of Bergavenny*, gave the dignity of baron to its possessor, it was undoubtedly a dignity *more ancient* than the 49th of Henry III. at which time the personal dignity of Le Despencer is supposed to have originated, according to the terms of the instrument by which the king granted that dignity, by way of restoration to lady Mary Fane.

" The whole proceedings in these cases must have been " founded rather on conveniency than principle."

" But the proceedings in the several cases of Ros, Le " Despencer, and Bergavenny, show, that in the reign of " James the First, either party, or interest, or the favour " of the crown, prevented the decision of the rights then " in question, on consistent principles."

" In the reign of Edward the First, and his successors, " many persons, whose lands have been described in dif- " ferent documents as *baronies*, or held by *barony*, were " ***not summoned*** to *parliament*, as far as appears from any " documents now existing; and many *were summoned*,

" who, as far as the committee have discovered, *had not* " *any barony*, or *part of a barony*."

The committee seem to consider from the words in the black and red books of the Exchequer, and of Testa de Nevill, that the words *honour*, *barony*, and *fee*, or *feoda*, were *synonymous terms*. Hastings is sometimes called an *honour*, sometimes a *barony*, and in Domesday it is described by the word *castellaria*. Alberic de Vere, describes his property as " *Baronia Comitis Alberici*," though he was certainly *earl of Oxfordshire* by the charter of Henry the Second. Simon de St. Liz, makes his return as " *Comes Simon*," although he was *earl of Northampton*. Hugh Bigod, *earl of Norfolk*, styles himself " *Comes Hugh Bigod*." The earl of Clare makes his return merely in the words " *Carta de Honore Clar*."

Baronies were not held by a *certain* number of knight's fees, many baronies were held by one knight's fee. It is " evident from what is said in Testa de Nevil, re- " specting the baronies of Northumberland, that lands " may be holden *as a barony*, by a service which was not " the service of a *knight's fee*, or of any portion of a " knight's fee, though the service may have been con- " sidered as a military service. It is also evident, that " many lands in that county were holden *as baronies*, " which did only the service of one knight's fee, and that " lands were holden '*in baronia*,' by *the third*, *the sixth*, " and even the *twelfth part of a knight's fee*. What was " the meaning of thus holding '*in baronia*,' the committee " are unable to state, unless it meant that the tenure was " *in chief of the king by military service*, and if such was

" the meaning, these entries may serve to interpret the " charter of John, and to import, that *all persons who held* " *in chief of the king by military service, were deemed to* " *hold 'in baronia,'* and the return of Godfrey Baiard, " in the black book of the Exchequer, tends to con- " firm this supposition, though a *barony seems to have* " *been generally understood to have been a properly,* " *having a 'caput' or 'head,' to which feudatories owed* " *service.*"

" Edward I. did not summon to parliament, all who " held baronies in Northumberland, but used *a discre-* " *tionary power*, but generally summoned *the principal* " *barons* of the county."

" After partition made, it has been said, that the coheir, " being a male, to whom the '*caput baroniæ*,' was awarded " on partition, was entitled to be summoned in respect of " the whole barony, by reason of the possession of the " '*caput baroniæ*,' but it is evident, that males having the " *caput baroniæ*, were frequently not summoned."

" The irregularities in issuing writs of summons to par- " liament, can scarcely be accounted for, except by the " supposition, that after the reign of Henry the Third, " *tenure by barony was disregarded in the issue of these* " *writs.* Persons *summoned to one, or more than one* par- " liament, were frequently *not summoned* to the *succeeding* " *parliament*, and the descendants of persons who had " been summoned to parliament, were never summoned, " or not till after a long interval of time. It is evident, " that the crown, *rightfully or wrongfully exercised a dis-*

" *cretionary power*, in summoning some persons to parlia-
" ment who held lands by barony, and omitting others
" during, and after, the reign of Edward the First, and
" of omitting to summons some persons to parliament,
" whose ancestors had been summoned to prior parliaments
" in the reigns of Edwards I. II. and III. and also as-
" sumed, and their successors have retained the power of
" summoning to parliament persons who did not hold any
" barony, head of a barony, or even part of a barony.
" Thus *persons were created by writ*, even the ancient
" baronies of Le Despencer, Ros, and others, being now
" considered as *created by writ*, whether the ancestors of
" those now enjoying the dignities were originally sum-
" moned *by reason of tenure or not*, being a question
" *wholly disregarded*."

" *A right to be summoned to parliament by reason of*
" *tenure, of any land denominated at any time a barony,*
" *does not appear* by any document which the committee
" have discovered, *to have been asserted in the reign of*
" *Edward the First*, or any of his successors, till the claim
" made by Edward Nevill, to be summoned to parliament
" by writ, in respect of his possession of the barony of
" Bergavenny, in the reign of king James the First."
The claim to the earldom of Arundel, *by prescription as immemorially annexed to the castle and honour of Arundel*, and the patent granted to lord Lisle, on a claim similar to that of Arundel, were both founded on groundless assertions and premises. And in the reign of Henry the Sixth, many persons were possessed of lands denominated baronies, without any claims on their parts to be summoned to parliament as barons.

" It is evident, that in the reign of Richard the Second, " the feudal system, so far as it had been established by " the Norman conquest, had lost much of its force by the " result of various circumstances, and the grant *by patent* " of the dignity of *a baron*, to rank with, and have the " privileges of a peer of the realm, as a baron, without " creating at the same time a tenure by barony, was wholly " *inconsistent with the idea that the peers of the realm then* " *formed a baronage, composed of persons holding by ba-* " *ronial tenure, and having a right of summons to parlia-* " *ment, in consequence of such tenure.* The baron, so " created by patent, and the heirs male of his body, were, " by the terms of the patent, to have *all the privileges* of " *other barons*, which, if the *other barons* were *barons by* " *tenure*, and he, and the heirs male of his body, were " only barons *by patent*, could not be."

" Among the various complaints made in parliament at " different times, of breaches of the great charter, or of " grievances of any description, it *never was a subject of* " *complaint*, after the reign of Henry the Third, that " *persons holding baronies* were not summoned to parlia- " ment, or that persons *not holding baronies* were so sum- " moned; although if persons holding by barony, and such " persons only, were entitled to be so summoned, the " neglect to summon any so holding, and the summoning " of persons not holding by barony, and the creation of " barons by patent without regard to tenure, were all " *grievances affecting those who held by barony.*"

It has been suggested in a note, page 196, to be scarcely correct to style bishops *lords of parliament by tenure.*

William the Conqueror, changed the tenure of the bishops from *frank almoigne* to tenure by barony, and established for them *a secular* honour—*a successive baronage.* He made all baronies feudal, as well those held by the clergy as laity, and they were bound, with the other barons, to suit and service in the *curia regis.* When legislative parliaments were established, all the bishops were summoned as *successive lords of parliament under the new constitution*, as were such of the abbots and priors, as held by barony, and had been summoned as suitors to the *aula regis.* For the principal men of the realm, as well laymen as ecclesiastics, were summoned to become part of and support the king's government.

The Conqueror changed the kingdom into one great manor, and kept his court, called the *aula,* or *curia regis*, in the nature of a sovereign court baron, at Easter, Whitsuntide, and Christmas, at which time all his tenants, the whole body of freeholders of England, attended of course; and on a general summons, at any other time appointed by the king, they were also bound to attend. In these the rights of the suitors, the king's tenants, were adjudged, in the same manner as private lords had judgment in their several manors, as they have to this day. If right was not done in the baronial courts, the cause was removeable to the *curia regis*, as to the court of the lord paramount. The bishops holding "*sicut baronias*," were suitors in the king's courts, the only difference between them and the barons was, they obtained by *succession*, the lay barons by *inheritance.* In the alteration in the constitution, and the establishment of the three estates, they became the first estate, and are lords of parliament in right of their office

of bishop, and although they are called *lords spiritual*, yet their office of lord of parliament is secular and temporal; they are called to represent the clergy in their *temporal interests*, but are not fully invested with their dignity until they have received their temporalities, and cannot take their seats until after that ceremony. Bishops are, therefore, lords of parliament by succession and compact, not *by tenure*.

It is worthy of remark, that but two persons appear on the rolls of summons to the parliaments of England, by the title of *baron*—the *baron of Stafford*, and the *baron of Graystock*, all others are styled *domini*, *milites*, or *chivalers*. This, in itself, supplies the inference that the title of *baron*, in those days, did not mean a *lord of parliament*, but was given to those two lords for some extraneous quality. They were barons in the feudal sense, that is, lords of the honours, or liberties, of those places.

In Ireland, it may be asserted, the bearing in ancient times, the name or title of *baron*, is rather against than in favour of the bearer being a peer of parliament: no instance occurs, in the Irish records, where the possessors of a certain property have been for ages uniformly termed barons, that they were not *barons of a palatine liberty*. Those individuals who were summoned to parliament by the title, were invariably of this description, always holding their manors or baronies of the lord paramount of the liberty, not of the king, not a single exception occurring. Those whose lands were not in palatine districts, and held directly ofthe king, are invariably called *domini*, as are all the lords paramount of palatines, with whom the king's

barons only differed in the extent of their jurisdiction. It may be considered as a rule, that in Ireland when the records name a man baron of any place, that it is part and parcel of a palatine liberty.

The lords paramount of liberties, had power to enfeoff their immediate tenants' lands with certain inferior jurisdiction, or cognizance of pleas, such as *soc* and *sac*, *thol* and *them*, *infangthef*, &c. which constituted them barons, or *sectatores*, in the court of the lord paramount, and was in fact, the nominating principle.

In some instances, when the crown granted a liberty, with a reservation of a reversion, in case of failure of heirs of the body of the grantee, it was provided, that the enfeoffments made by that grantee, should in case of that event, pay the same suit and services to the crown; and in one case, where the crown had granted the lands of Thomond to Thomas de Clare, a new patent issued, enabling him to make feoffments, *as well to knights as others*, and their heirs, "*per rationabilia servitia inde facienda. Ita* "*quod feoffatum illorum homagia et servitia de tenentibus* "*illis, simul cum residua parte terra Tothmonia, in manu* "*predicti Thomæ manentes, ad nos et heredes nostros rever-* "*tantur, si contingat ipsum Thomam decederi absque here-* "*de de corpore suo legitime procreato. Et nos pro nobis et* "*heredibus nostris feoffamenta illa rata et firma habebimus* "*in perpetuum in forma predicta.*"

Here the crown provided, that the tenure created by the subject, should not be disturbed on the contingency of the escheat of the lordship to the crown.

CHAPTER VIII. *

AULA REGIS.

In the *sovereign court baron*, or *aula regis*, established by the Conqueror, the suitors swore fealty, and renewed and confirmed their obligations to the crown, and the king became assured of their allegiance by their personal attendance and his intercourse with them at the royal entertainments which, as a matter of state policy, took place on these occasions. There also were recognised their own services and the rights of the king their lord. In this *curia regis*, *all* the king's tenants *in chief* were obliged to obey the king's writs of summons, writs of commission, and his appointments in the ordinary administration of justice, in which also the *capitalis justiciarius* presided. But it must not be understood, that *all* the tenants of the crown were summoned on any occasions to this court, or for every cause; though *all might attend* only such a number were summoned as were sufficient to make *a full court*. The impossibility of so great a number forming either a court of justice, or a legislative assembly, seems to be an appalling difficulty, and

has induced extraordinary conclusions on the subject; the *aula regis* was certainly a *national court* of justice on which, though liable to attend, the tenants were not over anxious to force their services, and, therefore, but few beyond the necessary number of those who were summoned, attended: like the freeholders of the present day, they were not anxious to take on themselves the burthen, except when peculiar circumstances gave an interest to the matter in consideration before the court. Besides, the disinclination, indifference, and neglect, which must necessarily be presumed in the great majority of such a body, to the troublesome and onerous business of jurisdiction and judgment of disputed rights, is sufficiently obvious.

In the famous case of Odo, bishop of Bayeux, and archbishop Lanfranc, at Pinenden ;* it is said that Lanfranc recovered, "*judicio baronum qui placita tenuerunt, ex communi omnium astipulatione et judicio.*"

In the *curia regis* also, the barons were tried, all pleas of the crown heard, and whatever is now the business of the Courts of Common Pleas, Exchequer, and King's Bench, were dispatched. Fines were levied, as appears by the record quoted by Spelman in his glossary, under *Finis*. "Coram domino rege et Johanne filio ejus, &c. baronibus et fidelibus domini regis qui tunc ibi præsentes erant."

In this court, men eminently skilled in the law were

* See page 14.

appointed to hear such causes as were sent down to them; these were merely officers of the *curia regis*, and not such justices as now form the Court of Common Pleas, to whom all Common Pleas are appropriated for their judgment. Writs, before the charter of John, were returnable, "*coram me vel justitiario meo,*"* but after that charter, "*coram justiciariis meis apud Westmonasterium.*"† By Magna Charta, c. 11, it was provided, "*communia placita non sequantur curiam nostram, sed teneantur in aliquo certo loco,*" and writs were made returnable there, and all common pleas taken out of the jurisdiction of the *curia regis*, and the administration of justice between parties committed to men of skill, who were answerable for their judgment, which might be appealed from.

The office of *justiciarius Angliæ* was of the first dignity; besides presiding in the high court of the barons, he had the power of superseding all other officers, and executing their offices at his pleasure. He was next to the king in rank—"*justiciarius Angliæ est secundus a rege,*‡ *justiciarius Angliæ secunda persona regni.*§

Hoveden says, that when king Richard suspended William de Longchamp, chief justiciary, from his office by letters from Palestine, he authorised four of the principal of his barons to execute the office in these words—"*præcipimus vobis ut, secundum dispositionem vestram, tam de escheatis, quam de omnibus aliis agendis regni, disponatis.*"

* Glanville, lib. 1, cap. 36.
† Bracton, lib. 2, cap. 32.
‡ Jub. Saresbur.
§ Liber Dunelmensis.

"*Per justiciarium Angliæ omnia regni negotia terminabuntur.*"*

The justiciary called all accomptants, sheriffs, and bailiffs to account.†

Mathew Paris says, the justiciary was bound by his office to preserve and maintain the writs of investitures, and all other privileges, dignities, and customs of the king and his crown, and that "*justiciarius Angliæ ministrabat tam de rebus perceptis quam exceptis.*" And also, had the command of the king's fleet, and the whole navy, and all his other affairs. ‡

Hubert Walter, archbishop of Canterbury, and justiciary, levied an army, and led it against the Welsh in the reign of Richard I. and took offenders out of sanctuary and did justice on them.

"*Hugo Bigot, totius Angliæ capitalis justiciarius cæpit Angliam circuire a comitatu ad comitatum, a libertate ad libertatem, omnibus pro meritis impensurus justiciam.*"§

The justiciary might direct a *præcipe* to the king himself, requiring him to answer the suit or complaint of a demandant. By all this, it appears, that the justiciary might exercise at his pleasure the offices of constable, marshal, treasurer, admiral, and chief judge. Thus it appears, the office of justiciary had annexed to it a power

* Jervalensis. † Radulphus de Diceto.

‡ Chronica Roffensis. § Selden.

equal to the jurisdiction of the *aula regis*, over which he presided.

Spelman says—" De capitali Angliæ justitiario. Qualis olim et quantus fuit. Quot solus magistratus, et quam ultra potestatem, obtinebat.

" *Ejus amplitudo. Justitia totius Angliæ;* alias *capitalis Angliæ justitia,* seu *justitiarius.* Quantus hic olim fuit, usquequaque non liquet. Dignitate omnes regni proceres, potestate, omnes superabat magistratus. De dignitate, sic niger liber fiscalis ca. 4. In scaccario *residet imò et præsidet primus in regno, capitalis scilicet justitia.* De potestate, valdè (inter alia) claret, quòd quatuor summorum judicum hodiernorum muneribus solus aliquando fungeretur. Scilicet, *capitalis justitiarii banci regii,* id est, placitorum coronæ, seu criminalium: *capitalis justitiarii banci communis,* id est, placitorum civilium: *capitalis baronis scaccarii,* hoc est curiæ ad sacrum patrimonium, et fiscum pertinentis et *magistri* plerunque *wardorum,* hoc est, pupillorum et orphanorum. Quippe licet amplissimus hic magistratus sæpius in bellis versaretur, semper (ut opus se habuit) in arduis regni negotiis: foro tamen et rebus judicandis non eximebatur. Proceres enim et barones regni, è jure dignitatis; alii plurimi è tenuræ ratione: complurimi etiam è regum privilegio (ut copiosè indicant diplomata) in placitum non vocarentur de tenementis suis (sicut nec barones, aliis utique de causis) *nisi coram rege vel capitali ejus justitiario.* Placita autem civilia (vulgariter dicta communia) sub illis seculis unà agebantur in palatio regis, coram ipso rege, seu *capitali ejus justitiario,* cum placitis coronæ: nec discretos habuerunt judices ante annum 9 Henrici 3 vel potius 17

Johannis regis. Utroque verò hoc anno concessum est à rege ad instantiam procerum ; *ut communia placita non sequerentur curiam* (regis) *sed in loco certò tenerentur.* Loco itaque jam facto stationario, stationarii pariter habendi erant judices : quibus cùm sistere se non potuisset *capitalis Angliæ justitiarius*, quòd ex officio, peregrinantem ubicunque curiam regis sequeretur : exuere cogitur hanc provinciam, aliique cedere exequendam, qui subinde *capitalis justitiarius communium placitorum constitutus* est. Amisit hoc modo *capitalis Angliæ justitiarius*, partem officii sui non solum ingentem nobilemque sed et valde quæstuosam. Mansit tamen in scaccario primus, juxta illud quod è nigro libro fiscali superiùs paulò retulimus : et quod alibi in eodem capite perhibetur his verbis. *Illic* (scil. in scaccario) *residet capitalis domini regis justicia, primus post regem in regno ratione fori, et majores quique, de regno qui familiariùs regiis secretis assistunt.* Sequitur perinde ut de his etiam cognosceret, quæ magistro wardorum hodie supposita, ante institutionem illius curiæ, hoc est, annum 32 Hen. 8. olim agebantur in scaccario. Sed et hinc exuitur (ut ariolor) sub ætate Edouardi 2 novo inducto magistratu ad vices ejus obeundas, qui *capitalis baro scaccarii* nuncupatus est."

The office of chief justiciary continued after the charter of John, from whom all writs and judicial authority were still derived, and the new Court of Common Pleas was regulated by the same formula as governed the *curia regis*, where the chancellor and his clerks attended to form the writs according to circumstances; but the authority of the justiciary ceasing about the end of the reign of Henry the Third, the statute of Gloucester provided for writs of entry

to a reversioner in the case of tenants in dower, aliens in fee, though the alienation was a forfeiture of the estate at common law, and as the chancellor had no power to form a new writ, that statute provides for the making a writ of entry *in casu proviso*. The statute of Westminster, the 2d, c. 24, provides, "quotiescunque evenerit in cancellaria quod in uno casu reperitur breve, et in consimili casu cadente simili indigente remedio concordent clerici de cancellaria in brevi faciendo." In the full authority of the *curia regis* no right could have failed of a remedy, but no rights were after remediable but where they were in analogy with those which received relief in the time of this great and original judicature.

The erection of the Court of Common Pleas, was the first reduction of the court of the barons called the *curia domini regis*, in which the chief justiciary presided. It still continued a court of pleas of the crown, and of appeals, and for the officers, dependants, suitors, and others, who had the privileges of that court. Bracton says, "*Rex habet unam propriam curiam, sicut aulam regiam, et justiciarios capitales, qui proprias causas regias terminant et aliorum omnium per querelam (appeal) vel per privilegium seu libertatem.*"* This could not mean the King's Bench, for *sicut aula regis* is not applicable to that court, as the office of chief justiciary continued after this period, and what follows in Bracton puts the question beyond doubt, "item justiciariorum quidam sunt capitales generales, perpetui et majores *à latere regis residentes;*" which could apply to none but the barons.

* Bracton, lib. 3, cap. 7.

This sort of judicature was not calculated for long continuance, it was only fit for a small community, and limited business; its machinery was too cumbrous for useful and efficient action; the increase of population, and the consequent great addition of legal business, rendered a new arrangement indispensible. The power of the barons, and the number of retainers they brought with them, to countenance their pretensions, and overawe the sovereign, or their opponent barons, produced great inconvenience, as appears from Eadmer: so much was this felt by Leicester himself, that he struck out the plan of representatives, or knights of the shire, and shortly after the office of the justiciary was discontinued. Philip Basset was the last who held the office. Spelman says, quoting an anonymous author, "ad obitum Henry III. 1272, *summorum Angliæ justiciariorum authoritas cessavit, postea capitales justiciarii ad placita coram rege tenenda appellati sunt.*" The ancient style *capitalis justiciarius Angliæ*, is now allowed to the chief justice of the King's Bench, though the legal style is "*capitalis justiciarius ad placita coram rege tenenda.*" Ralph Hengham was the first chief justice of the King's Bench, 2 Edward I.

After the discontinuance of the office of justiciary, the chancellor presided at the meetings of *commune concilium regni*, which, from being an assembly meeting only when called by the king on an emergency to grant a subsidy, became a court of record, by having the remaining functions of the *aula regis* added to it, and obtained the *name of parliament*, and eventually ceased to be a court of original jurisdiction.

Edward I. also separated the exchequer from the *curia regis*, and made Adam de Stratton the first chief baron. By the statute of *articuli super cartas*, it was enacted, that no Common Pleas should be held in the exchequer thereafter, contrary to the great charter. The barons exercising their power last in that court, may be the cause why the judges thereof are called *barons*, and, having the judgment of the revenues arising from the tenures of the barons, the principle of judging all by *their peers* may have made it necessary that those judges should be of baronial rank.

One power and authority has continued inseparable from the baronage, which is the trial of their peers, and in this respect the *curia regis* continues to this day, no other provision having been made. The office of chief justiciary is revived, whenever a trial of a peer takes place, in the *lord high steward*, for the office of *seneschallus* and *justiciarius* were synonymous in those times.

The *curia regis*, was summoned by a general writ, the 26 Hen. III.* directed to the sheriffs in this form—"*Rex vicecomiti Northampton*, &c. *precipimus tibi quod summoneri facias archiepiscopos, episcopos, comites, barones, abbates, priores, milites et liberos homines qui de nobis tenent in capite*," &c. The great charter directs writs to be specially sent to the greater barons, "*ad habendum commune concilium regni de auxilio assidendo*, &c. &c. or to do any act connected with chartered rights. Councils were also summoned on special occasions, as in the case of

* Claus. 26, Hen. III. m. 7, d.

the council at Northampton, before which Becket was brought in judgment. Thus two descriptions of councils were in use, as was the case with all the German nations. Grotius says, "*Omnes Germanicæ originis reges atque imperatores, duplici concilio utebantur, altero statario qui senatus dicitur ad res quotidianas, altero evocato, concilium aut conventus ordinum ad res momenti majoris.*"

It will not now be contended with Mr. Petit, that the ancient boroughs had representatives in the councils before the reign of Henry III. this point has been abandoned. Mr. Hallam in his *Middle Ages* states, that "the right of general legislature was undoubtedly placed in the king conjointly with his great council, or if the expression be thought more proper, with their advice." The representatives of cities and boroughs, are never mentioned in history or records, till the parliament summoned by Leicester, in the 49th of Henry III. The previous councils were of the baronage of England merely.

Some of the ancient councils called for special emergencies, were probably constituted differently from others, such as those called to sanction a succession of the crown, as in the case of William Rufus, Henry I. Stephen, and John, but these could not be considered precedents for general rules, but extraordinary emergencies, and similar councils may be found in the history of almost every country.

It thus appears, that circumstances and necessity produced innovations in the jurisprudence of England, and the *aula regis*, or *curia baronum*, in which vested origi-

nally all the national administration of justice, was gradually deprived of its jurisdiction, and its powers given to new courts, as the emergencies of the times required, until at length it was divested of all but its appellant jurisdiction, and the right of trying its own members; which were both eventually transferred to the upper house of parliament, on the final establishment of that body, which grew out of the council of emergency called the *commune concilium regni,* first a mere council *de auxilio assidendo*, but eventually a legislative body consisting of lords spiritual and temporal, and representatives of the commons of England.

To apply these results to claims of peerage, we would say, no man can now claim to be a member of the *aula regis*, or, as a *baron by tenure*, a right to be summoned to that *sovereign court of barons*.

First—Because that court being gradually deprived of its jurisdiction, its principal functions were transferred to the courts of Common Pleas, Exchequer, and King's Bench, and its remaining jurisdiction transferred to the upper house of parliament; on the establishment of which body it *ceased to exist.*

Secondly—Because the *service* due by the barons to the sovereign in that court *naturally ceased on the transfer of the jurisdiction as aforesaid,* although their *military service* remained.

Thirdly—Because the statute of Charles II. abolishing feudal tenures, put an end altogether to military and

all other feudal services, reserving but a few of ceremony at coronations.

Therefore, any claim now made for a peerage, must be a claim to be a member of the upper house of parliament, now called the house of peers, a body which did not exist until the assembly, of which *barons by tenure* were the components, was absolutely defunct and extinct, and which arose out of its ashes. For if a man be now in possession of a castle, manor, or liberty which, while the *aula regis* existed, he would have constituted the possessor, as a *baron by tenure,* a suitor therein, he only proves that, if the laws *had not changed*, he would have been a *suitor in that court;* but, that court having been altogether abolished, and an assembly established, of which, indeed, some of the suitors in the *aula regis* were constituted members, while others were left as they were, merely possessed of the baronial jurisdiction in their liberties, he proves nothing to entitle him to be a *lord of parliament*, or a member of the newly established and constituted legislative assembly.

The system of the administration of the laws has been thus changed, by the division of the jurisdiction and powers of the *aula regis* into four courts, separating and allotting to each, specific jurisdiction, and defined practice. The enormous power of the chief justiciary, was abolished at the same time, and the like appropriation of the portions of his authority was made among the judges of the respective courts, and the elevation of the chancellor to the rank of second lay person of the realm, was the natural result of the revolutionary movements of the reign of Henry the

Third. King Edward the First finding these alterations necessary for his own safety and the good of his people, and feeling, or at least expressing, a strong sense, "*that where all were interested all should be consulted*," was induced gradually to admit his barons and people to a share in legislation, at first, perhaps, merely as a matter of grace and favour, or as a point of policy to advance his own interests and ends, but which eventually became a right by prescription and enjoyment, which, had he or his successors been disposed to abrogate, would have cost them their crowns or lives. Thus the parliaments from small beginnings gradually advanced in dignity and power, step by step acquiring, from the concession of the sovereign, powers and privileges which providentially settled into the happy and temperately balanced constitution, which human wisdom and prudence could never have contrived or even contemplated, its excellencies being founded on points, which men in general would consider defects, and set down as deformities; anomalies which some politicians, without due consideration or reflection, denominate its decayed and even *rotten* appendages. The powers of the three estates are all happily balanced, and the power of the sovereign clearly defined. In the third estate all descriptions *of property* are represented, the landed by the representatives of the counties; the mercantile interest by the cities, and large towns, and the *monied* and manufacturing interests by the smaller boroughs. The representation of *property*, rather than *persons*, has ever been the *principle* of the English constitution; and it was not till the cities and boroughs *became rich*, that they acquired the right of being represented. No country ever enjoyed so much true liberty, or so long and uninterrupted a

period of prosperity as England, so well matured, tried, proved, and found excellent above all comparison, and suited to the wants and circumstances of the country, has been her constitution. The statesmen, therefore, who, with a reckless rashness, venture on an experiment of cutting down that excellent constitution, to make it accord with modern notions of abstract right, will, if successful, inflict an incurable evil on their country, and be certain of acquiring for themselves niches among those whose eminence has been in proportion to the mischief they have brought on mankind.

To conclude, I may be permitted to observe—when a history is written for the purpose of justifying, and shewing the legality of certain doubtful political acts, as was the case in the supporters of the violations of the constitution by James the Second, we should take its statements with some suspicion, and it may be just to stigmatise such writers as the enemies of liberty, and advocates of arbitrary power, but indiscriminate condemnation of a writer, because he feels the evidence justifies certain conclusions, is unfair. It must, however, be admitted, that writers, who belong to or adopt any political or religious denomination, are too apt on all occasions, and in all points, to consider themselves called upon to defend the particular dogmas and opinions of their sect or party, even when discussing the facts of history. A recent author of reputation, is not unwilling, when speaking of Brady, Carte, and the authors of the parliamentary history, "*to take credit for a sincerer love of liberty than any of their writings display*," and, therefore, recommends himself to his readers, as a lover *of liberty*, when

his pride should have been, as a lover *of truth*, to establish and prove the events which occurred, and the facts as they were, rather than those he or his party wished to establish, acting as a juryman, and giving his verdict according to the evidence, regardless of every other consideration. It will not be denied, that some writers have been advocates when they ought to have been historians, but a writer cannot justly be stigmatised as an enemy of liberty, for attributing the origin of his country's freedom to one source rather than another.

It has been observed by Mr. Hallam, that it would be considered by some, almost as a *breach of privilege*, to assert that the house of commons was any thing but the legitimate descendant of the *witenagemote*, and it may be added, that many writers have been most unjustly condemned, and ranked among the advocates of despotism, who with stern integrity, have asserted, that during the reigns of the early Norman kings of England, *the people had little "to do with the laws but to obey them,"* as if it were the duty of an honest historian to suppress facts, if they tended to disprove the truth of a popular notion, and even to allow the *suggestio falsi* to pass unreproved, if it was made in support of national prejudice and vanity.

The pride of Englishmen is not satisfied, unless it could be proved that their ancestors *never were slaves*, but had in all ages enjoyed free institutions. It may be more glorious to descend of free and uncontaminated blood, than to have derived a descent from the helot who had burst his fetters and destroyed his chains, but truth must not be

violated even to gratify national vanity. The ancient nobles of England enjoyed much freedom and independance; the noble earl could lay his hand on his sword, and claim his rights by the same title as the sovereign derived his crown; but it cannot be denied, that there were also serfs and villains, who attached to the soil, were *the property* of these free nobles; from these also, it must be admitted, the great majority of the nation is descended.

The greatest truths are deprived of their influence and weight, by weak and insufficient proofs, and the clearest rights sacrificed by being hazarded on uncertain and improbable issues. One thing is certain, that whatever form of government is settled by the consent of the prince and agreed to, embraced, avowed, and acted on by a community for ages, and found agreeable to the habits of the people, must be held to be legally and sufficiently established, and the government it superseded as abolished; it is, therefore, no deficiency in love to liberty, to assert that the parliament was not originally what it now is, but arose out of civil convulsion, and revolutionary movements.

CHAPTER IX.

FEUDAL INSTITUTIONS AND PARLIAMENTS OF SCOTLAND.

THE following extracts from, and observations upon, the essays of lord Kaims and Mr. Wallace, and the Lords First Report, on the feudal institutions and parliaments of Scotland, are considered sufficient to show, that legislative parliaments in Scotland, were the results of modern civilization, and the progress of the human mind; brought about in England by civil convulsions, and the fruits of compromise, for mutual safety, between the prince and the people, and in Scotland by a desire of imitation. It has not been thought necessary to go into great length with the history of the parliaments of Scotland, or to touch upon it farther, than to show the analogy of the working of the feudal system in the two countries, and it may be added, in all countries.

The best Scottish authorities, says lord Kaims, admit that the "feudal customs of England and Scotland, were "precisely the same, for a century or two after the days of

"William the Conqueror," and that the Scotch borrowed the system from England.

"The feudal law during that period, was *precisely* "*the same* in both kingdoms, so far as we can gather, by "comparing the ancient statutes and law books of Eng-"land and Scotland."

"The Regiam Majestatem, the oldest institute of Scot-"tish law, is generally believed to have been compiled in "the reign of David the First, and contains a full and "accurate system of feudal customs."*

"But it had all along been understood to be the prero-"gative of the crown, acknowledged in every statute re-"lating to the parliament, that the king might call, by "special writ, any of his vassals he had a mind, notwith-"standing their exemption."†

Attendance in parliament is a personal service, which cannot be performed by the vassal, unless the superior desire to accept it, and for this reason it is *not due unless demanded.* A baron, therefore, who is not called, cannot regularly take his seat in parliament.

The parliament originally was made up of the king's vassals, and the king *had no power* to force any person into parliament, who did not hold of him in chief.

* *Glanville* and the *Regiam Majestatem*, are substantially the same work, the latter compiled from the former.

† Lord Kaims' Essay on British Antiquities,—I. The introduction of the feudal law into Scotland, 1745.

An earl was originally entitled to sit in parliament as the king's immediate vassal, and a baron on the same footing.

In 1387, when John Beauchamp of Holte, was created a PEER, "*ipsum Johannem in unium parium et baronum "regni nostri Angliæ prefecimus,*" or lord of parliament, the distinction between a *lord*-baron, or peer, and a baron by tenure was fully established.

"The commerce of land, begun some centuries before, "was greatly increased in 1387. A barony by tenure, "which was originally a permanent dignity in a family, "was no longer considered as such, after frequent in- "stances of the transmission of these dignities from hand "to hand, in the way of commerce."

Patents, creating lords of parliament, were not used in Scotland before the reign of James the Sixth.

"The attendance of a *baron by tenure* in parliament, "*is a service,* and not a *matter of right,* whereas, when "one is created a *lord of parliament,* the power of attend- "ing parliaments is bestowed upon *him as a privilege.*"*

The charter of king Robert of Scotland, conferring the earldom of Murray on Thomas Ranulph, contains the following passage:—"Volumus etiam et concedimus pro nobis "et heredibus nostris, quod—omnes *barones* et libere-te- "nentes dicti comitatus, qui de nobis et predecessoribus

* Lord Kaims' Essay, p. 98.

" nostris in capite tenuerunt, et eorum heredes, dicto Tho-
" mæ et heredibus suis predictis, homagia, fidelitates, secta
" curiæ, et omnia alia servitia faciunt, et baronias et tene-
" nenta sua de ipso et heredibus suis predictis de cetero
" teneant: salvis tamen baronibus et libere-tenentibus
" predictis, ac eorum heredibus, juribus et libertatibus
" curiarum suarum hactenus justè usitatis."*

The erecting lands into regalities, or even into justiciaries, the highest territorial jurisdictions common in the ancient practice of Scotland, united not the person invested with them in any particular order, and did *not imply nobility*. They conferred authority only.

Every freeholder, "or owner of land, held of the crown in chief," was *entitled*, as well as bound by the laws, to sit and vote in the parliament of Scotland, and a distinction was not anciently made in this respect, between large and valuable, and little or inconsiderable estates.

The view, therefore, with which fiefs were erected into lordships, earldoms, marquisates, and dukedoms, could not be to bestow *inelective seats on their owners*. The proprietors of the freeholds raised to these dignities, were possessed of their privileges before their elevation, *as a right which accompanied their property, and which was already enjoyed* by them, could neither be given, nor intended to be given by the king.

" Titles of honour, and degrees of nobility, as well as

* Lord Kaims' Essay, p. 107.

" distinctions of rank, were early known in Scotland;
" but, before 1587, they had not in this country any dig-
" nities, *entitled to be denominated peerages.*"

" In ancient times, attendance on parliament was ac-
" counted a *burthen, not esteemed an honour.*

" Performance of it was obliged to be compelled *by*
" *penalties,* and fines were imposed on those who ab-
" sented themselves from their duty. It is not, therefore,
" in itself, likely that men would court an attainment,
" which, instead of bringing advantages, bound to a la-
" bour from which people were generally solicitous to be
" exempt."

" A *peerage,* I understand to be a state or dignity,
" *merely personal,* which confers on the persons elevated
" to it, an exclusive and an *hereditary right to sit and*
" *vote in the legislative body, by blood, and without*
" *election.* Till 1587, every freehold, small as well as
" great, undignified as well as dignified, bestowed that
" right. The view, therefore, in which, before 1587,
" titles were granted to men, could not be to confer on
" them hereditary voices in parliament." So far lord Kaims.

Mr. Wallace, in his able treatise, entitled an Essay on the *Nature and Descent of Ancient Peerages,* published in 1775, took the same view as the Lord Kaims, and clearly shows that titles of nobility in Scotland, had *no necessary connection* with seats in parliament. He says—
" Dukes, marquesses, earls, lords, barons, freeholders,

" *all enjoyed hereditary seats* and places in the supreme " convention. The characteristic difference by which those " ranks were discriminated from each other, could not " consist *in a quality* which pertained *equally to them all.* " Either every proprietor of a fief held of the king must " be asserted to have been lord of a peerage, or you *will* " *not find that order in the old parliament of Scotland.* " The *barons* and freeholders, it is universally allowed, " were *merely commoners.* The other members the lords, " the earls, the marquesses, and the dukes, might *be* " *noble, but considered in their legislative relation would* " *not be peers.* In fact, I believe that no instance can be " produced of any nobleman, who was not possessed of " considerable landed property, and *of course entitled to* " *sit in the senate before his elevation* to that degree."

" The Scotch parliament consisted of three estates, the " clergy, the landed interest, or the barons, and the bur- " gesses, or the traders, and the nobility instead of sitting " in a house by themselves, or forming an estate distinct " from the other estates, constituted a part of that com- " posed by the landed interest of all the freeholders indis- " criminately nobles as well as commons. All met in one " chamber and formed but one house ; their names entered " on one roll, and their votes given promiscuously, one " speaker presided over the whole."

" Men accustomed to read in the Scottish history, of " persons distinguished by the appellations of *earl* or *lord*, " I doubt not, will startle at finding it asserted, in con- " tradiction to prejudices strongly imbibed by them, *that* " *even in the sixteenth century, peerages existed not in*

" *Scotland.* That to behold hereditary seats acquired " through the medium of them—people are apt to imagine " an intimate connection to have anciently subsisted be- " tween that privilege, and those same titles to which they " find it united *in their own days;* and to conclude that the " former always constituted the pre-eminence, intended " to be conveyed by the latter. These objects, however " resembling, are essentially different. *Every freehold,* " *before* 1587, *gave an inelective seat in parliament.* " That court consisted of three estates—the nobility " formed only an incorporated part of that estate, which " was composed indiscriminately of all the freeholders.

" These facts are not *probable conjectures* merely; they " amount to decisive proofs, that in ancient times an order " of men, who can *justly be termed peers existed not in* " *Scotland.*

" The substantial dignities, which are now enjoyed by " the hereditary councillors of the English crown, and " which aggrandize them, are materially different from " those honourary appellations which were borne by the " old Scottish nobles."

" Fiefs were not ennobled to bestow on their owners " inelective seats in parliament, but merely to raise them " in rank."

" Not precedency only, but titles also flowed from no- " bility conferred on lands. The titles assumed or con- " ferred on the possessors of lands, imported no more " than the persons who bore them were proprietors of es-

" tates, which had obtained *dignities of the same appel-*
" *lation.*"

"The form of creating lords of parliament, probably was
" not introduced (into Scotland) before James I. (of Scot-
" land) returned from England into his own dominions."

" A person to whom a *barony* belonged, was termed a
" *baron*, as the word *freeholder* reciprocates to *freehold.*
" This title, *if it may be called a title*, was *not conferred*
" *on him by the crown*, either in the charter by which his
" lands were incorporated into that dignity, or by any
" separate deed, expressly creating him a baron, assigning
" him a place for his style, and ordering him to be dis-
" tinguished by it, but was spontaneously bestowed by
" the people, or used at mentioning him in discourse and
" in writing, *merely because he was proprietor of a piece*
" *of ground erected into a barony.*"

" The commoners entitled to vote in electing a member
" to serve in parliament for any shire, are always described
" in the books in which they are ordained to be enrolled,
" the *barons* and freeholders of the county."

" At present a title and a style are always assigned to
" persons enrolled in the royal writs, elevated to that state,
" but were seldom specified in old times, and a clause
" either particularising those, by which the patentees
" should in future be distinguished, or authorising the
" noble grantees to assume them, was much oftener
" omitted than inserted, a proof that a title and a style
" were implied in a particular species of property."

"In ancient charters, by which lands were raised to "honours, place or rank is sometimes enumerated among "the pre-eminences implied in them; and the terms used "in those deeds, however apt in some cases, to be misun- "derstood at present, will constantly be found, if atten- "tively considered, to mean no more than *precedency or* "*degree.* *A seat in parliament*, an object in itself little "valued, as well as implied in every freehold, I dare not "assert positively, I believe, however, was never given "or expressed. But, after peerages had been disjoined "from fiefs in 1587, a right to sit and vote in that as- "sembly, as well as a title corresponding to their dignity, "began to be expressly conferred."

"Originally with us, none had a seat in parliament, "but those possessed of a freehold of the king," &c. &c.

Dignities conferred on lands, on alienation, passed along with the fiefs from the former proprietors to the new acquirers.

The ancient custom of summoning all the barons or freeholders to parliament, continuing in use until recent times in Scotland, enable us to form a more correct idea of the early practice in England; and the foregoing notices clearly evince, that the titles of duke, earl, or lord, had no necessary connection with the seats in parliament, or what we now term *a peerage.* These dignitaries were nobles, and as before stated, invested with certain rights and jurisdictions, within their respective territories or lordships, and cognizance of certain pleas, and were bound to attend the king's court or parliament, if summoned;

but that attendance was a *service* and not a *dignity;* at present the chief part of the dignity of a peer is having a seat in the house of lords, and is considered the chief privilege. Originally all the freeholders (or barons) had that right as well as the earls and great lords.

In 1427, the parliament or general council of Scotland, ordained by special act, that the small barons and free tenants *need not come to parliaments* or general councils, if that *two wise men* for each sheriffdom should be elected and sent to represent them, who should be called commissaries of the shire. And by these commissaries, a wise and expert man should be chosen to be the common speaker of the parliament.

The act also provides that, " All bishops, abbots, priors, " dukes, earls, *lords of parliament,* and banrents, which " the king will be received and summoned by council and " parliament, by his special precept."

In this document the *barons* are omitted, and the words *lords of parliament,* or peers, are substituted, which is a very remarkable fact, and strongly supports the position that *barons* were not lords of parliament, or peers. The Scottish legislature followed closely the customs, and adopted many, or most of the innovations or improvements of their English neighbours. James the First, of Scotland, having passed his youth in England, was well acquainted with and affected to the English constitution.

In 1455, an ordinance was made touching the habits of the earls, *lords of parliament,* and commissaries of bo-

roughs, as no mention is made of the commissaries of the counties; it would appear that they were included among the *lords of parliament*, as the representatives of the *nobles* of an inferior rank, or the lesser barons, or freeholders.

Barons, in its general sense in Scotland, included all lay tenants of the crown of every description, the burgesses of the burghs only excepted.

In 1457, a statute of James II. ordained, "that no free-
" holder, that held of the king the sum of twenty pounds,
" should be constrained to come to parliament or general
" council, as for presence, unless *he be a baron, or spe-*
" *cially of the king's commandment, be warned* either by
" *officiar or writ.*"

In 1503, it was ordained, " that no baron, freeholder,
" or *vassal*, with one hundred marks should *be compelled*
" to come personally to parliament, unless specially sum-
" moned by the king. But all above that sum were to
" attend under the lawful penalties."

As the term *baron*, applied to all the tenants in chief of the crown, without exception, the commissaries for shires were commissaries for the *barons*, and formed part of the second estate of the kingdom, or the nobles, or lords of parliament.

It was not till the revolution of 1688, that the commissaries for the shires were formed into the second estate, the lords being the first and the burgesses the third.

On personal honours, Mr. Wallace makes the following judicious observations:—"Two propositions seem unde-
"niable; first, that those honours had been brought into
"Scotland a considerable time before the year 1587; and,
"secondly, that they continued *not* to be peerages till the
"great alteration then affected on parliament and them."

"In the Scotch records, several noblemen are found
"bearing the titles of lord and earl, before their lands had
"been erected into lordships and into earldoms. The
"estate of Cassilis continued till the year 1642, to be no
"higher than a barony, and was only then formed into
"an earldom by Charles I. But Gilbert Kennedy ap-
"pears to have been created lord Kennedy about 1459,
"in the reign of James II. and his grandson David, lord
"Kennedy, was advanced to the dignity of earl of Cassilis,
"by James IV. in 1409."

"Perhaps it was intended in 1427, both by the legisla-
"ture to confer on the sovereign, and by James to obtain
"for the crown, a prerogative of annexing inelective seats
"to blood alone, and to sever that privilege from property.
"It seems, however, to be pretty certain, either that this
"intention was not carried into complete execution, or
"that a prerogative so lofty, corresponding little with the
"circumscribed condition in which the royal authority was
"then formed, was never exercised by the king. Sum-
"monses are ordered, by the act, to be given to banrents,
"but are not allowed to be directed to commoners of in-
"ferior degree. And the same arguments, which evince
"that before 1587, territorial honours had not been proper
"peerages, establish, that those noblemen on whom per-

" sonal dignities were conferred before that year, were not " peers, in the just sense in which this word can alone be " understood. The right which they had to vote in that " assembly, was not derived from their honours, but in- " dependent of them: and Buchanan, who could not be " ignorant of their effects, affirms that an empty title still " remained, even in his days, the sole advantage which " their possessor reaped from them."*

" The personal honours which were introduced by " James, or, perhaps, I ought rather to say, which were " intended to be introduced by him, were still designed " not only to be annexed to blood, but to bestow on their " possessors a superiority above those whose estates were " not inferior to theirs in denomination; and this prece- " dency was to be taken in parliament itself, and in the " presence of the sovereign."

The most ancient statutes of Scotland, are those of Alexander I. whose reign commenced 1214, but they are of questionable authority, the enacting clause of one is, " *Alexander king of Scotis throu common consale for the profit of the land*, &c." from this, little is to be learned. The authentic statutes commenced with James I. A. D. 1424, the first of which, would lead to the conclusion, that James on his return from England, established, or new modelled, his parliament after the English fashion; for the first enactment is to appoint six individuals, two from

* Nunc vero, nec ullus in novis honorum nominibus est modus; neque, præter inanem tutulum ullius nominum usus. Lib. vi. c. 52. Buchanan died in 1582.

each of the three estates, to examine the books of the law, that is to say, the "*Regiam Majestatem et Quoniam attachiamenta, and mend the lawis as neds mendment.*"

The circumstance mentioned in the note in page 210, of the most ancient institute of the Scottish law, being, in substance, the same as Glanville, the oldest one in England, is very remarkable, and shows the imitative character of the Scottish people. It has been questioned which was the original, but this has been put beyond dispute by Mr. Reeves,* who says—"The close "agreement between *Glanville* and the *Regiam Majesta-*"*tem*, leaves no room to doubt, that the one is copied from "the other, though the merit of originality between them "has occasioned some discussion. An essay has been "written expressly on this subject, in which it is said to "be clearly proved, by the internal evidence of the two "books that *Glanville* is the original. It is observed by "that writer, that *Glanville* is regular, methodical, and "consistent throughout; whereas, the *Regiam Majesta-*"*tem* goes out of *Glanville*'s method, for no other assign-"able reason, than to disguise the matter, and is thereby "rendered confused, unsystematical, and, in many places, "contradictory. To this observation upon the *Regiam* "*Majestatem*, it may be added, that, on a comparison of "the account given of things in that and *Glanville*, it "plainly appears, that the Scotch author is more clear, "explicit, and defined; and that he writes very often with "a view to explain the other, in the same manner as the "writer of our *Fleta* explains his predecessor *Bracton*. "This is remarkable in numberless instances all through

* History of the English Law, vol. i. 225.

" the book, and is, perhaps, as decisive a mark of a copy " as can be."

The conclusion of the Lords Committees on their examination into the history of the Scottish parliament, is as follows:—" That all tenants of the crown, who held by mili- " tary tenure, formed in like manner (to the parliaments of " Scotland) the *parliaments* of England, previous to the " reign of John, seems highly probable, from the clause " in his charter, requiring for the assessing of extraordi- " nary aids, the calling by general summons such tenants " of the crown, (either generally, or those holding by mi- " litary service) as were distinguished by that charter, not " by the appellation of the small barony, but by the dis- " tinctive appellation of the greater barons given to those " from whom they were intended to be distinguished. " And as those, who in Scotland might be deemed the " greater barons, formed one estate with the smaller barons, " and free tenants, *and continued to form one estate with* " *the commissaries of shires*, after the election of such " commissaries was authorised and used, and, as those " commissaries as well as their electors were in the act of " James the Sixth, called by the general name of barons, " there seems additional grounds for presuming that the " term *barons*, applied to the members of the parliament " (common council) of England in the reign of Henry " the Third, and particularly the parliament of Oxford, " *included all such tenants in chief of the crown, both* " *great and small*, who according to the charter of John, " were to be summoned to assess extraordinary aids and " scutage; and that when twelve persons were appointed " in the parliament of Oxford *to represent the community*,

"they were to represent the community of tenants in "chief of the crown, *and not to represent* any persons "who were not tenants in chief of the crown; and that "when the twelve so appointed were described as appointed "by the barons, it was intended to express that they were "appointed by the community of the barons, assembled "at Oxford, *both great and small*, that is by all the "tenants in chief present at that meeting, and *not by the* "*greater barons only*. The assertion that they were "elected *par le commun*, would involve a strange contra- "diction, unless the word *barons*, included the whole "body assembled, acting for the whole community of "tenants in chief of the crown, and the election of earls, "and of persons who may be presumed to have been "amongst the greater barons, to be the twelve persons for "the *commune*, would appear absurd if those twelve "persons had not been members of the common body.

"The claim in subsequent times of exemption of their "subtenants from the charges of the wages of the knights "of the shires, by the prelates, earls, and barons, sum- "moned by special writs to the parliament, will appear, "in one instance, at least, to have been made on the "ground, that the subtenants were represented in parlia- "ment by their lords so summoned by special writ; and "if this was the original ground of the exemption so "claimed, the claim may tend to explain the true meaning "of the words used in various documents, purporting that "grants of aids apparently made by an assembly consist- "ing only of prelates, earls, and barons, were made by all "the free tenants of lands, *pro se et suis villanis*."*

* First Report, pp. 117, 118.

CHAPTER X.

IRELAND.

THE legal institutions of Ireland were avowedly formed on the English model, in other words, the *English laws* and customs were introduced into Ireland, with the English rule. The judges, in both countries, have ever laid it down, as an acknowledged and settled dictum, that a perfect identity of the *common laws and legal customs* of England has existed in all ages, among the Anglo-Irish, and those Irish who resided within the English pale, and were lieges of the king.

Both records and history justify this conclusion, nor would it have been thought necessary to insist at length on this position, which has been so well established by Sir John Davis and others, had not solitary, and often but apparent exceptions to the general and usual course of the common law of England, partially obtained. These exceptions are not peculiar to Ireland, being also found in the records of England, from which doubts have arisen in the minds of persons acquainted but with the

surface of things, who have drawn conclusions and broached opinions, which a more perfect acquaintance with the subject, would have convinced them, were groundless and untenable.

Thus, there are some, but not of much authority, who insist that the Anglo-Irish had laws and customs of parliament and descent of peerages, different from those which governed the parliament and peerage of England, and books have been written and printed in support of that axiom. Although their arguments are crude and superficial, and founded, as aforesaid, on *apparent deviations* from the usual course of descent, which, when analyzed, are found to be perfectly reconcileable and in accordance with the rules of English jurisprudence, it may be well to set the question at rest by a brief investigation.

It is much to be regretted, that in their reports, the Lords Committees, have almost altogether passed over the parliaments of Ireland without notice. Surely, as these assemblies were formed on *the English model*, the records of Ireland and England, respecting them, held out fair expectations, that they might contain some entries likely to throw light on the history and practice of the parliament of England; but scarcely a reference is made to Ireland. A document transmitted to the late lord Redesdale, respecting the fining of an individual for not attending a parliament in the fiftieth year of Edward the Third, mentioned in the appendix to the first report, p. 478, is almost the only mention of Ireland in the Reports.

Neither can a good reason be discovered, why, in the

printed *Fœdera*, a majority of the entries on the early rolls in the Tower, particularly those respecting Ireland, *are omitted.* Many Irish articles are inserted, otherwise we might suppose it had been intended to form a series of volumes, respecting Ireland especially and particularly, which would have been an object well worthy the consideration of the record commissioners; but, as the case now stands, it would be better to print in supplemental volumes, *all the omitted entries*, whatever may be their subject matter, as they are of fully equal value and interest with those printed. This has been demonstrated by Mr. Bayley, the able and intelligent deputy-keeper of the records in the Tower, who printed the omissions of the sixth year of John, and they alone amount to nine pages of folio. The latter volumes are more complete, and the principle of exclusion of Irish documents has not been carried to such an extent, but many are omitted. Why should there be any *omissions?* Every state paper, charter, or letter, has its historical interest and value, and the *Fœdera* is imperfect and comparatively useless, without the complete body of documents. They consist, in part, of instructions to officers, charges against them, and their defences; in such cases, it is not sufficient to give one or two articles of a series *as a specimen*, the whole ought to appear; *examples* of what the records consist, are not wanted; as evidence and materials of history they are alone valuable, and one may say, in that respect, they are inestimable. When we consider the character, learning, and liberality of the individuals, under whose control, direction, and management, the new *Fœdera* is now compiled, it is, indeed, difficult to account for the omission of those important articles; and it is much to be regretted, as mo-

tives of national hostility, contempt, and jealousy, are always ascribed, by a sensitive people, when no other rational or sufficient cause can be ascribed for so extraordinary an omission.

These circumstances have rendered the task of giving a history of the constitution of the councils, parliaments, and peers of Ireland, more laborious, and much increased the difficulties attending it; but it has also made its results more valuable, as it may be said to be new and almost altogether untouched ground. It is, therefore, proposed to enter into more detail, and to give documents more at length, than would have been necessary, if complete reference could have been had to such works as the Lords Reports and the *Fœdera.*

Mathew Paris states, that "Henry the Second granted "the laws of England to the people of Ireland, which "were joyfully received by them all, and confirmed by "the king, having first received their oaths for their ob-"servation of them." It is probable that this was a grant to *all the Irish who chose to adopt it;* but as O'Conor, king of Connaught, O'Neill, king of Kinelowen, or Tyrone, O'Donel of Tyrconnell, and other Irish chiefs, became but *vassal princes,* "*reges sub eo ut homines sui,*" paying to the English sovereign annual tribute, in acknowledgment of his sovereignty, it is not probable that they would or could immediately change the laws and customs of their territories, *per saltum;* and we find that by a writ of 6 John, no one was to be impleaded for the chattels, or even *the life,* of an Irishman, *until after Michaelmas Term in that year;* therefore, if the boon was general, it must

then have been considered forfeited by the frequent attempts made by the native Irish, to shake off the English yoke, after Henry's return to England. The writ of the 6th of John, however, seems to imply, that after fifteen days of Michaelmas, 1205, the benefits of the laws extended to all the Irish, as well as the English, although in the reigns of Henry the Third, and his successors, the records show that *all the Irish* had not, during those periods, the benefit of the laws of England. This point, however, is not necessary to be investigated, if we are able to show that Henry granted the *Anglo-Irish colony*, the English law, it will be sufficient for the purpose of this discussion.

The ancient rolls of Chancery of Ireland, were burned by an accidental fire in Mary's-abbey, in Oxmantown, near Dublin, in the year 1300, as appears by an entry on the patent roll of Chancery of that year. By an act of parliament of Ireland, made in the second year of Richard the Third, a statute of *Henry Fitz-Empress* is recited, which provided for the election of a lord justice, or chief governor of Ireland, in case of a vacancy, by death, or otherwise. This statute of Richard the Third enacts—
"That the statute of *Henry Fitz-Empress* made, for
"the election of a governor of Ireland, in time of vacancy,
"be by the authority of this parliament ratified and con-
"firmed, and that Thomas Fitzgerald, chancellor, Sir
"Roland Fitz-Eustace, treasurer, Philip Bermingham,
"chief justice of the King's Bench, Thomas Plunket,
"chief justice of the Common Pleas, Oliver Eustace,
"chief baron of the Exchequer, or his deputy, for the
"time being, Thomas Dowdall, clerk of the Rolls of

" Chancery, John Estrete, the king's serjeant at law, and " every of them, be adjudged to hold their offices for their " lives. And that it be lawful for them, or the majority of " them, as well for all others who shall severally hold any " of the said offices by gift, under the teste of Gerald, " earl of Kildare, in any manner, as governor, *according* " *to the tenor, usage, and execution of the said statute of* " *Henry Fitz-Empress*, with the assent of the nobles of " this land, as is specified in the said statute, upon every " such avoidance, to choose a noble lord to be governor, " who should hold the government, as justiciary, accord- " ing to the ancient usage used from that time."

Although this enactment might not be considered conclusive, if it were discordant with less questionable documents, yet, as it is in perfect harmony with better evidence, it would appear just to infer, that Henry established all the courts of justice for the administration of the laws of England in Ireland. The *chancellor*, *treasurer*, *chief justices*, *chief baron*, &c. are recited to have been authorised, and empowered by the said statute of Henry the Second, to elect a chief governor, in case of vacancy, and this is confirmed by the subsequent statute of 33 Henry VIII. 2 sect. cap. 2, which says, " *that ever since the conquest of the realm* " *of Ireland, it has been used therein, that upon every* " *avoidance of a governor, the council elected a justice.*" Of this council, the great officers before mentioned have ever formed a part.

King Henry, having thus carefully arranged the civil government of Ireland, and provided for the contingency

of the sudden death of the chief governor, and appointed Sir Hugh de Lacy, his first viceroy, embarked at Wexford, on Easter Monday, in 1173, and landed the same day near St. David's, in South Wales. This period was afterwards fixed, by the writ of the 6th of John, as the commencement of the running of certain writs, which strongly corroborates the probability of Henry's having, by statute, established the courts of English law in Ireland, while he remained in that country, if it does not amount to demonstration thereof.

This writ remains on the Patent Roll of the 6th of John, in the Tower of London, and is as follows:— "Rex, justiciario, baronibus, militibus, et omnibus fidelibus Hiberniæ, &c. salutem. Sciatis quod dedimus potestatem justiciario nostro Hiberniæ, quod brevia sua current per totam terram nostram et potestatem nostram Hiberniæ, scilicet, breve de recto, de feodo dimidio militis, et infra, et de morte antecessoris, similiter de feodo dim. mil. et infra, et erit terminus de morte antecessoris post transfretationem Henrici regis, patri nostri, de Hibernia in Angliam. Et breve de nove disseisina, cujus erit terminus post primam coronationem nostram apud Cantuariam. Et breve de fugitivis et nativis inde erit terminus post captionem Dublin, et breve de divisis faciendis inter duas villas, exceptis baronibus. Et ideo vobis mandamus, et firmiter precipimus, quod hæc ita fieri et firmiter teneri per totam potestatem nostri Hiberniæ faciatis. Teste meipso apud Westm. 11 die Novembris."*

* Rot. Pat, 6 Joh. 1204, m. 6, in Turr. Lond.

This document proves clearly, that there had been established in Ireland, courts similar to those then existing in England, and that it became necessary, to secure regularity and order in their proceedings, to settle the periods since when writs had run, or might be alleged or pleaded to have run, and one is fixed from the *capture of Dublin*, in the year 1171, *before the arrival of king Henry in Ireland*, and another the king's departure in 1173.

The great charter of the liberties of John, was transmitted to Ireland in the twelfth year of king Henry the Third, Anno 1227, to Richard de Burgo, then lord justiciary, in which he was commanded to call before him the archbishops, bishops, earls, barons, knights, and freeholders, and the bailiffs of the counties, and publicly to read before them the said charter, and to swear the magnates of Ireland, and to command them, on the king's behalf, to firmly hold, observe, and put in force, the *said laws and customs of England.* And also to cause proclamation to be made in every county of Ireland, that the said laws and customs should be observed and obeyed, with the exception that neither for the death, nor the chattels of the Irish, should any one be impleaded until after fifteen days of St. Michael, in the said year.

The writ itself, is considered of so much importance, that it is here inserted at length:—"Rex, dilecto et fideli suo, Ricardo de Burgo, justiciario suo Hiberniæ, salutem. Mandamus vobis firmiter precipientes quatenus certo die et loco faciatis venire coram vobis archiepiscopos, episcopos, abbates, priores, comites, et barones,

milites, et libere tenentes, et ballivos singulorum comitatuum, et coram eis publice legi faciatis cartam domini Johannis regis, patris nostri, cui sigillum suum appensum est, quam fieri fecit et jurari a magnatibus Hiberniæ, *de legibus et consuetudinibus Angliæ observandis in Hiberniâ.* Et precipiatis eis ex parte nostrâ quod leges illos et consuetudines, in cartâ predictâ contentas, de cetero firmiter teneant et observant. Et hoc idem per singulos comitatus Hiberniæ clamari faciatis et teneri, prohibentis firmiter ex parte nostrâ et super forisfacturam nostram, ne quis contra hoc mandatum nostrum venire presumat; eo excepto quod nec de morte nec de catallis Hibernensium occisorum nichil statuatur, ex parte nostrâ, citra quindecim dies, a die Sancte Michaelis, anno regni nostri 12°, super quo respectum dedimus magnatibus nostris Hiberniæ usque ad terminum predictum. Teste meipso apud Westm. 8 die Maii anno regni nostri 12°."*

In this same year, king John, as stated by Mathew Paris, placed sheriffs and other ministers to govern the people, according to the law of England, and to that end, "Ipse duxit secum viros discretos et legis peritos, quorum communi consilio statuit et precepit, *leges Anglicanas teneri in Hibernia*, &c."†

In 1245, 30 Henry III. the following writ issued to the lord justiciary of Ireland, confirming former writs on this subject, and directing that all the writs current in England, should likewise be made current in Ireland, under the king's new seal. The writ is as follows:—

* Rot. Claus. Turr. Lond. 12 Hen. III. 1227.

† Rot. Pat. 11 Hen. III. m. 3, Turr. Lond.

De legibus Anglicanis in Hibernia tenendis.

" Rex, &c. quia pro communi utilitate terre Hiberniæ, et unitate terrarum regis, *rex vult, et de communi consilio regis provisum est, quod omnes leges et consuetudines que in regno Anglie tenentur in Hiberniâ teneantur*, et eadem terra eisdem legibus subjaceat ac per easdem regatur, sicut dominus Johannes rex cum ultimo esset in Hiberniâ *statuit et fieri mandavit.* Quia etiam rex vult quod omnia brevia de communi jure, que currunt in Angliâ, similiter currant in Hiberniâ, sub novo sigillo regis. Mandatum est archiepiscopis, &c. quod pro pace et tranquillitate ejusdem terre, per *easdem leges eos regi et deduci permittant, et eas in omnibus sequantur.* In cujus, &c. Teste rege apud Wodestock 9 die Septembris."*

Prince Edward, as lord of Ireland, having been prevailed on to issue, or rather the chancellor having issued a writ, against the bishop of Lismore, which, in its nature, was contrary to law; it was superseded in its effect by a writ of the king's. " Quia vero dictum breve tam dissonum est, et contra leges et consuetudines in regno nostro tentas."

" The writ is as follows :—Rex, thesaurario et baronibus de scaccario Dublin, salutem, quia, de assensu et voluntate prælatorum et magnatum terræ Hiberniæ, dudum fuit provisum et concessum, *quod eisdem legibus tenerentur in terra illa quibus homines regni nostri utuntur in regno nostro Angliæ, quod eadem brevia,* quoad terras et tenementa recuperanda, teneant in terra illa, quæ tenentur

* Rot. Pat. 30 Hen. III.

in regno prœdicto sicut justa. Et dicta provisio et concessio omnibus retroactis temporibus fuerunt obtenta et approbata, miramur quam plurimum quod (sicut ex insinuatione venerabilis patris Thomæ, Lismorencis episcopi, accepimus) emanare permisistis ex cancellaria Edwardi filii nostri in Hibernia, *contra consuetudinem obtentam et formam brevium in regno nostro usitatam.* Breve infrascriptum contra præfatum episcopum in hæc verba:—

"Edwardus, illustris regis Angliæ primogenitus, ad vic. Waterford, salutem, præcipe Thomæ, Lismorensi episcopo, quod juste et sine dilatione reddat Waltero, episcopo Waterford, Maneria de Archmurdeglan, Kilmurdri, et Motha, cum pertinentiis, quæ clamat esse jus ecclesiæ suæ, et in quæ idem episcopus non habet ingressum, nisi per Alanum, quondam Lismorensem episcopum, cui Griffinum, quondam Lismorensis episcopus, qui inde injuste et sine judicio disseisivit Robertum quondam episcopum Waterford predecessorem episcopi, post ultimum redditum, &c.

"Quia vero dictum breve tam dissonum est et contra leges et consuetudines in regno nostro tentas, et formas brevium nostrorum ibidem approbatas, præsertim, cum breve ingressus non transeat tertiam personam, nec ratione intrationis in terram aliquam, post mortem alicujus, comperat, actio alicui de terra illa, nisi illi, cui per mortem illam jus debetur in eadem, nec enim dicitur intrusio, qui jure hæreditario, vel ratione ecclesiæ suæ, succedit predecessori suo in hiis de quibus idem predecessor fuit seisitus in dominico suo ut de feodo, die quo obiit, vobis mandamus quod si dictum breve, a cancellario prædicto in forma prædicta, emanaverit, executionem ejusdem brevis supersedeatis, re-

vocantes, sine dilatione, quicquid per idem breve actum fuerit in curia prædicti filii nostri. Teste, apud Windsor, 27 die Januarii. Et eodem modo scribitur Adamo le Sole, justiciario Hiberniæ, et Walerano de Wellesley, et sociis suis itinerantibus, ut supra."*

The following is a decision of the Court of King's Bench of England, extracted from the Placita Roll, of the thirteenth year of king Edward the First, anno 1284, preserved in the Chapter-house at Westminster :—

Trinitat. anno decimo tertio. Majus Record.

"Placitam tangen custod. terrarum et corporum eorum qui sunt infra etatem in quo continetur in fine ejusdem :— '*Et cum una et eadem lex esse debeat tam in regno Angliæ quam Hiberniæ.* Ideo consideratum, est,'" &c.— *Rot.* 70.†

The parliaments of Ireland, held in the 9th of Henry V. and the 7th of Henry VI. made representations to those kings, among other grievances, of the hindrances which Irish students of the law met with at the Inns of Court in London, when they went there to study, in which the unity of practice of the laws in both countries is set forth. These statements are given hereafter in full from the Close Rolls, but the passages referring to the students at law, are here inserted. That of 9 Henry V.

* Prynne, 255.

† It may also be found in the *Abbreviatio Placitorum*, Ric. I. a Edward II. printed by the Commissioners of Records of England, p. 208, 6. It is also cited by lord Coke in First Institutes, 141.

is in the Norman French language, of which the following is a translation :—

" Item—Your said lieges show, that whereas they are ruled and governed by your laws, used in your realm of England, to acquire the knowledge of which laws, and to be well informed therein, your said lieges have sent able persons, of English blood, born in your said land, to certain Inns of Court,* where, from the time of the conquest of your said land, they have ever been received, until lately that the governors and company of the said Inns have refused, and would not receive the said persons into the said Inns, as they had been accustomed to do. Therefore, may it please your most gracious lordship, to consider this matter, and ordain due remedy, that your laws may continue and not be forgotten in your said land."†

That of 7th Henry VI. is in English, as follows :—

" Item, for asmoche as yo^{r} lawes of this land, in every of yo^{r} co^{r}tes, at all tymes have beyn used, both in pledyng and jugements givyngs, after your lawes used in Englond, and the lerned men here, yo^{r} said lawes, lernet in Innes of Co^{r}t, in yo^{r} realme of Englonde, into nowe late that thei beyn refused to be had in Innes of Co^{r}t, contrary to that that hath been used afor this time. We beseche you that ordenauncez be made yere that yo^{r} liege people of this land, y^{t} comyth thedir for ther said lernynge, may be rescayvet in to Innes of Co^{r}t, as they have bē of hold tyms ; so that yo^{r} lawes in this land may be contynuet forth ; considerynge yat ellys whan yese y^{t} nowe beyn here larnet beyn dede, there shal be none in this land that shall conne your lawes, lasse than it be lernet yere, the which

* Hostelles de Courte. † Rot. Claus. Hib. 9 Hen. V.

will be a great disprofite for you, and grete hynderyng for us yo^{r} pour lieges."*

Special care seems, at all times, to have been taken to preserve the uniformity of the Irish and English law—no change could have taken place in the former, but what, from time to time, had been made in England. The Irish lawyers were all educated in England, and the early judges were mostly Englishmen, sent over to administer the English law in its purity. The viceroys were also English, or what might be considered the same thing, Irish noblemen, in possession of large estates in England, as the earls of Ormond, &c. &c. they generally held the sword but a very few years; from the year 1173 to 1200, there were no less than *seventeen* chief governors: in the thirteenth century, *forty-six*—in the fourteenth, *ninety-three*—in the fifteenth, *eighty-five*—in the sixteenth, *seventy-six*—in the seventeenth, *seventy-nine*—in the eighteenth, *ninety-four!* All were naturally attached to the English laws and customs, but held the sword for so short a time, on an average, not *two* years, that none were long enough in Ireland to form laws or customs in accordance with their own notions. The customs of the *mere Irish* were, indeed, different, but they had no influence on the administration of the laws. Where the Irish had power they superseded the English law altogether, and introduced the Brehon, or Irish law, but where there was English rule there was English law. The viceroys and the judges knew no laws or customs, but those of England; and when that was the case, no arbitrary variations could have occurred in the administration of the English law in Ireland.

* Rot. Claus. Hib. 7 Hen. VI.

The following documents show the appointment of certain English lawyers, to high legal offices in Ireland, as well as the anxiety of the king for the due administration of the law :—

" *Quod ministri regis infrascripti sint ad certam diem in Hibernià.*

" Rex dilecto et fideli suo Roberto de Bousser, salutem: —Cum constituerimus vos capitalem justiciarium nostrum ad placita justiciarium nostrum Hiberniæ sequencia, una cum aliis fidelibus nostris tenendum, quamdiu nobis placuerit, prout in litteris nostris patentibus indè confectis, quas vobis per latorem præsentium mittimus, plenius, continetur ; vobis, sub forisfacturâ omnium quæ nobis forisfacere poteritis, mandamus, quod omni excusatione cessante, sitis apud Dubliniam, in Hibernià, in festo Sancti Michaelis, proximo futuro, ad exercendum et faciendum officium supradictum, juxta tenorem litterarum nostrarum prædictarum et adujvamentum, quod nobis in hâc parte facere tenemini, coram thesaurario, scaccarii nostri Dubliniæ, cui injunximus quod hujusmodi sacramentum ibidem à vobis hâc vice recipiat præstandum, nos in cancellariâ nostrâ de die receptionis litterarum nostrarum prædictarum, et ubi, per præfatum latorem subpœnâ prædictâ, per litteras vestras certificantes. Teste rege apud Nottingh. xvi. die Jul. per ipsum regem.

" Consimilia brevia diriguntur subscriptis, mutatis mutandis, videlicet :—

" *Adæ de Lymberg*, cui rex commisit officium cancellarii regis Hiberniæ, habendum quamdiu rex placuerit.

" *Roberto de Storburgh*, quem rex constituit capitalem baronem de scaccario, Dublinii.

" *Hugoni de Colewyk*, qui constituitur unus baronum, de eodem Scaccario.

" *Thomæ de Louth*, qui constituitur capitalis justiciarius ad placita justiciarium regis Hiberniæ, sequencia in casu quo *Robertus de Bouser*, partes illas adire noluerit, et secundarius si idem, Robertus, partes illas adierit.

" *Thomæ de Dente*, qui constituitur secundarius justiciarius ad placita in banco Dublinii.

" *Johanni de Kirkebythore*, qui constituitur secundarius ad placita justiciarium Hiberniæ sequencia, in casu quo Thomas de Louth, fuerit capitalis ad placita illa." *

In the tenth year of Edward the Third, the following writ was issued:—

Pro hominibus terræ Hibernæ.

" Rex, justiciario, cancellario, et thesaurario suis Hiberniæ, salutem. Ex parte proborum hominum partium prædictarum nobis est ostensum, et fama publica, immò pociùs infamia, hoc divulgat, quod vos et alii ministri, ac officiarii nostri ibidem, personarum acceptores, et deferentes hominibus plusquam juri, pari lege non tractatis potentes, mediocres, et simplices homines dictæ terræ; nam nimis defertis et favetis potentibus, permittentes eos et eorum complices opprimere pauperes, et gravare vicinos, jura nostra invadere, et ea sibi attrahere, potestatem regiam usurpare, debita nostra detinere, novitates inchoare, et facinora varia perpetrare, quorum proterviam reprimere non curatis, set sine legis fræno, sublaxo vestro regimine, inpunè, per devia propriæ voluntatis.

* A. D. 1334, Claus. 8 Edw. III. m. 19, d. in Turr. Lond.

"Pauperes verò et mediocres qui vobis libenter obediunt, ab injuriis non defenditis, set eos contra justiciam nimis atteritis et gravatis, in depressionem juris, ipsorum dampnum non modicum, et aliorum perniciosum exemplum.

"Nos igitur attendentes quod sumus omnibus absque personarum acceptione justiciæ debitores, et quod ad vindictam malorum, laudem verò bonorum, constituti sunt a deo secularium principum potestates, ac proinde volentes super præmissis remedium congruum adhiberi:—"Vobis mandamus, sub fide et legianciâ quibus nobis tenemini, firmiter injungentes, quatinus circa directionem debitam dictæ terræ nostræ, juxta leges et consuetudines approbatas, cum omni solicitudine laborantes, equâ lege tractetis et judicetis omnes et singulos *qui per legem nostram Anglicam regi debeant*, magnos et parvos, divites et pauperes, notos et ignotos, domesticos et extraneos, uni plus quam alio non faventes; set pares singulis laxetis habenas, confoventes bonos, et excedentes, prout eorum excessus exposcit, debitè castigantes, taliter super hiis vos habentes quod eos qui jam vobis super hoc detrahunt, obmitescere faciatis; nosque vestram prudenciam debeamus ex hoc merito commendare. Teste rege, apud Wodestok, ii. die Junii, per ipsum regem et consilium."*

It appears by a writ of 12 Edward III. that English judges, and high legal officers, were appointed to ad-

* A. D. 1336, Claus. 10 Edw. III. m. 27, d. in Turr. Lond.

minister the law in Ireland, and that when any deviation from the practice occurred by the appointment of others, they were considered "*insufficientes et minus idonei*," "*in legis subvertionem, et fidelium nostrorum partium earundum depressionem manifestam*," and, therefore, the king considering that "*negotia nostra in terra predicta per hoc non modicum possent prosperari*," supplies an immediate remedy.

"*Quod justiciarii in Hibernia, tam ad communia placita, quam ad placita justiciarium regis sequentia, Anglici esse deberent.*

"Rex justiciario suo Hiberniæ, et ejus locum tenenti, salutem.—Cum nuper per nos et consilium nostrum ordinatum fuerit et concordatum, quod justiciarii nostri, tam ad communia placita quam ad placita justiciarium nostrum Hiberniæ sequentia, *Anglici esse deberent, et quod negotia nostra in terrâ predictâ per hoc non modicum possent prosperari:*" Ac jam intelleximus à nonnullis quod quidam justiciarii, insufficientes et minus idonei, in partibus illis contra formam ordinationis et concordiæ prædictarum constituuntur, in legis subversionem et fidelium nostrorum partium earumdem depressionem manifestam: Nos, nolentes mala hujusmodi sine appositione remedii diutius tolerare; vobis mandamus quod, habito cum illis de consilio nostro partium illarum, super statu justiciariorum prædictorum avisamento pleniori, qui, videlicet, eorum sufficientes et idonei fuerint, et qui non, de eo quod indè inveniri contigerit, nos sub sigillo nostro, quo utimur in terrâ predictâ, reddatis distinctè et apertè, sine dilatione certiores; ut inde certiorati, alios loco minus idoneorum, prout decet, constituere faciamus. Teste rege

apud Westm. iii. die Marcii, per ipsum regem et consilium."*

It is difficult to imagine evidence more conclusive, of the perfect identity of the law of England and Ireland, both in theory and practice, in early times, than what has been already given. For the practice of law during the end of the fifteenth and in the sixteenth century, it may be well to fortify the evidence by the opinions of the most eminent sages of the law; we might quote many, a few will suffice. Sir John Davies was the best lawyer and most inquisitive historian who wrote on the subject; he was of English birth and education, and well acquainted with the laws and records of both countries; in the speech which, as speaker of the Irish house of commons, he delivered to the lord-deputy on the 2d of May, 1613, he says—"*Doubtless, though the rest of the ordinary courts of justice began with the first plantation of the English colonies here*, yet the wisdom of the state of England thought it fit to reserve the power of making laws to the parliaments of England for many years after."

Sir James Ware says—"The generality of historians have been mistaken, in ascribing to king John the introduction of the English laws into Ireland, which indisputably had an earlier source. For upon the successful expedition made into that country, anno 1172, by king Henry II. it was then reduced to the model and form of the English government in church and state."†

* A. D. 1338, Claus. 12 Edw. III. pars. 1, m. 23, d. in Turr. Lond.

† Harris's Ware, II. 7, 8.

"Thus, in all his grants to Fitz-Stephen, Cogan, Lacy, and others, he reserves certain *knight's fees*. To these reservations of knight's fees were incident wardships, marriages, reliefs, aids for making the king's son a knight, &c. &c. Now the king could not receive these incidents, if the laws had not given him means to come by them, which, of necessity, must be by sheriffs, officers of justice, and other ministers, according to the course appointed by law in his courts, and, therefore, it necessarily follows, that he granted the laws of England to Ireland, erected the courts for the execution of them, and for bringing in the profits of his grants, otherwise his reservations would have been idle and fruitless. The same may be said of the grants and reservations made by earl Strongbow, who died in 1176, about four years after the submission of the Irish; and he also reserved English tenures, which necessarily imply English laws; and the same may be said of many other grants, made in the reign of king Henry the Second."*

Sir Richard Bolton, lord chancellor of Ireland, 1644, quoting the above says—"So as now the *common law of England became the proper law of Ireland*, and because they have parliaments there, whereat they have made divers particular laws concerning that dominion, &c. &c. it appears that Ireland is governed by laws and customs, separate and divers from the laws of England." Sir Richard then enters into a discussion, to show that the laws of England were only established in the shire ground of Ireland. The object of the essay was to prove that

* Harris's Ware, II. 80, 81.

Ireland was not bound by English *statutes*, or acts of parliament, until they were confirmed by the parliament of Ireland.

Lord Coke in the first Institutes, 141, quotes a decision of the Star Chamber:—"Terra Hybernia inter se habet parliamentum et omnimodas curias prout in Angliâ, et per idem parliamentum facit leges et mutat leges, et illi de eadem terrâ non obligantur per statuta in Angliâ, quia non habent milites parliamenti."*

Further, in the fourth Institute, 349, he says—"Of the kingdom of Ireland, we shall not need to undertake another work to write of the courts of justice there, for they have *the same which we have in England and the same law*, saving where some that have written of them have in some main points mistaken the matter; we will convince the same by matter of record."

Other opinions might be adduced in support of the points under consideration, but what has been said is so conclusive, more might be justly deemed impertinent.

The following document cannot be considered legal evidence, yet is it worthy of preservation, as it throws some light on the nature of ancient tenures, and will have its weight as a historical document. It was entered on the Black Book of Christ Church cathedral, Dublin, in the reign of queen Elizabeth, and therein is stated to have been transcribed from an old book of the conquest of Ire-

* 2 R. 3. 12. In Camera Stellata, 1 Hen. VIII. 3.

land, which "*John Caddell hath.*" The language is, no doubt, different from the English of John's days, but that is not a valid objection to the genuine character of the document, because the transcriber into John Caddell's book, would naturally make it intelligible to his readers by altering the spelling and modernizing the diction.

"THE KNIGHTS TENURE AND SERVICE.

"Memorandum at y^e^ time that king John was in Ireland, divers, by his fader and him enfeoffed, did dught (doubt) of their tenure, and in what manner they should do service to him for their leuery, made this petition unto him.

PETITION.

"To the honorable and right puissant seignur John, kinge of Englonde, lord of Ireland, duke of Normandy, and Acquitain, also earl of Anjewe, prayeth you, your humble tenants, that whereas your honorable fader, and you, of your right large lordship to us, have given lands to hold of you and your heirs, to sume of us by knightes service, to sume one fee, to sume two fees, to sume three fees, or more, by knight's service, to sume one, two, or three knights' services, and to sume by half, third, fourth, or further part of one service, to some by service of one serjeant a fote, and to sume by sume of the said services, when escuage, or royal service runneth, and to sume by service to pay certain money, when the escuage runneth; and wee know not the tyme, neither in what manner, your service aforesaid shuld be done by us to you. Prayeth, therefore, your benign lordship, that you would certify us thereof to that default, (because of our ignorance to pay unto you your due servis) be not found in us, for the love of God, and in the way of charity."

ANSWER.

"The king will, that every man aboif written, do the aboif written service, when the escuage runneth, that is, when the royal service is proclaimed, and that service is, *when the king, by common council of his tenants*, send in certen day and place, by warning of forty days, at least, to do battayle, other to ride an hostyng for forty days, other more or less to warr upon his enemyes for the time being, then every man that holdeth his land by knight's service, other holdeth oone, two, or three fees, by knight's service, other holdeth by service of oone, two, or three knights, for every service, fee, or knight, aboifsaid, he is bound to have, at his costs, in the company of his lord for the time of the battayle, or riding to the hosting, as is aboifsaid, oone able man, armed in manner of a knight; that is to saye, in old time, every man shall be armed with haubricks and helms, with shelde, spear, and sword, being upon an able horse; but now the king will, that the said man be armed as knights do use to be armed in the same country. And every man that holdeth by half, third part, or fourth part, of oone service, to have company to performe oone service, if he will; and every man that holdyth his service by oone serjeant of fote, he is bound to have in company with his lord (as aboifsaid) one able man in old time with a spear, shelde, and long knyf; and now the king's will, that they have bowe and shafts, with a sword, as serjeants of fote doth use in the country; and if any that hold by knights, other by one, two, or three fees, by knight's service, make default of service, the king will, that for every service on fote, he shuld pay to his lord for every day twelve pence, and if any that hold by service of a serjeant

of fote, make default of his service, should pay to his lord every day six-pence, and he that hold his land by service to pay certain money, when the escuage runneth, so let him do, and so God save the king."

The system of talliage and aids was adopted in Ireland, immediately after the English conquest, as soon as the settlement of the country allowed it to operate.

On the Close Roll of 3 Henry III. in the Tower of London, is the following entry:—" Mandatum est Galfrido de Marisco, justiciario Hiberniæ, quod tallagium et efficax auxilium civitatibus, burgis, et dominiis domini regis, imponi faciat, unacum domino H. Dublinii, archiepiscopo, cui idem datus est in mandato, et quod ponant a regibus Conhath et Todmond, et aliis regibus Hiberniæ, et baronibus, qui de domino rege tenent in capite, cum efficace auxilio si dominus rex benignior eis semper inveniatur in agendis suis. Et mandatum est eisdem quod pecuniam illam collectam per nuncios discretos et fideles quam citius poterint in Anglia domino rege transmittant, sicut melius viderunt expedire. Datum apud Cailham, decimo die Nov. anno, &c."

This order or mandate, directs the lords justiciary to levy talliage, *and an effectual aid* on all the king's cities and boroughs, and that he and the archbishop of Dublin, should call on the kings of Connaught and Thomond, and the other kings of Ireland, and the barons, *who held of the king in capite*, to grant the king an effectual aid. Those barons who held of the lords of Leinster, Ulster, Meath,

&c. were taxed by their own lords, who held of the king in chief. This is the first instance on record, of an aid being demanded from the kings and barons of Ireland, and of the levying of talliage and an aid on the cities and boroughs of Ireland, which apparently was done as a legal and rightful exercise of the king's authority.

The first instance on record, of the magnates or barons of Ireland, being summoned to render service to the king out of their own country, by reason of their tenures, *in fide qua nobis tenemini*, was in the thirteenth year of king Henry the Third, A. D. 1227. The summons is on the Close Roll of that year, in the Tower of London, as follows:—Rex ————————, &c. salutem. Sciatis quod cum fuissemus apud Portesmouth a die Sancti Michaelis in xv. dies parati ad transfretandum sicut firmiter proposuamus: venit illuc ad nos Comes Britanniæ ..... nobis fecit ibidem de Britannia tenenda de nobis. Cumque de transfretatione nostra *inter comites et barones* nostros longius haberetur tractatus tandem per consilium predictorum ..... Britann. distulimus passagium nostrum usque ad instans clausum Paschæ anno, &c. xiiii° unde non oportet quod ad presens ad nos veniatis in Angliâ sicut prius vobis mand.....*domino indubitanter sumus* transfretatur ad predictum terminum clausum Paschæ. Vobis mandamus firmiter injungentes *in fide de nobis tenemini* quatenus nullo modo ..... apud London. die dominica in ramis palmarum anno, &c. 13° *te quinto militum ita parati equis et armis ad transfretandum* cum corpore nostro: quod vobis ad multiplices gratiarum teneamur.....xxvi die Octobris, &c. xi. ..... venirent ..... in xv. dies et .....videlicet.

Walterus de Lascy, se quinto,[a]
Hugo de Lascy, se quinto,[b]
Walterus de Ridelesford, se altero,[c]
Mauricius filius Geraldi, se tertio,[d]
Matheus filius Griffini, se altero,
Philippus de Barry, se altero,[e]
Willielmus de Lascy, se altero,
Theobaldus Pincerna, se tertio,[f]
Willielmus de Marisco, se altero,[g]
Geraldus de Prenderdast, se altero,
Willielmus de Wigornia, se altero vel solus bene paratus,[h]
Johannes de Clahull, se altero,[i]
Stephanus de Hereford, solus,[k]
Hugo Gaurel, se altero,
Patricius de Courcy, se altero,[l]
Ricardus de St. Michaele, solus,
Johannes filius Thomæ, solus,[m]
Geraldus de Rupe, solus,[n]
Johannes filius Dermitii, solus,[o]
David Basset,
Nicholas Parvus.[p]

..... Galweya et Alano de Galweya, quod ipsi sint ad eundem terminum cum equis et armis ad transfretandum cum rege.

[a] Lord of Meath.
[b] Earl of Ulster.
[c] Lord of Bray.
[d] Ancestor to the Earl of Kildare.
[e] Lord of Olethan.
[f] Lord Butler, ancestor to the Marquess of Ormond.
[g] De Montemarisco, or Montmorency, Lord of Stoneford and Lateragh, in Tipperary.
[h] Lord of Knockgraffen, also called de Braose.
[i] Lord of Balrothery, in the county of Dublin.
[k] Lord of Bray.
[l] Lord of Kingsale.
[m] Lord of Desmond and Decies.
[n] Lord of Fermoy.
[o] Lord of Rathdown, originally Irish.
[p] Petyt.

All these were barons of Ireland, and by these writs were summoned to attend the king, according to the respective services due for their lands, some with five knights fully caparisoned and prepared, others with three, and one, and others alone. This occurred in less than sixty years after the coming of Strongbow, and exhibits satisfactory, and conclusive evidence, of the perfect establishment of the feudal law in Ireland.

CHAPTER XI.

EARLY COUNCILS AND PARLIAMENTS OF IRELAND.

The early councils of Ireland were assemblies of the prelates, magnates, and chief tenants of the crown, similar to those of England. The legislative parliaments, immediately after their institution in England, and in their improvements of their constitution were adopted as they arose, and finally, after their complete and final arrangement in England, they also acquired in Ireland the state in which they continued till the union of the two parliaments.

In 38 Henry III. writs similar to that mentioned in page 74, directed to the archbishop of Canterbury, issued to the archbishops and bishops of Ireland, requiring their counsel and assistance. Similar writs were also directed to the magnates of Ireland at the same time. That to lords spiritual was as follows :—

" Rex, universis archiepiscopis et episcopis in Hibernia constitutis, salutem.—Cum rex Castellæ, cum multitudine

exercitus Christianorum et Sacacenorum, terram nostram Vasconiæ, in quindenâ Paschæ proximo futurâ, ingressurus sit hostiliter, ad terram illam destruendam et occupandam, ac per introitum ejusdem terræ, si eam optineret, quod absit, terras nostras Angliæ et Hiberniæ invadere aspiret; nos, super tam arduis et urgentibus negotiis *consilium vestrum et auxilium requirere proponentes, vos requirimus, in fide quâ nobis tenemini*, affectuosè rogantes quatinus, sicut nos et honorem nostrum, necnon et indempnitatem corporis nostri diligitis, nullatenus omittatis quin, in instanti mediæ quadragesimæ, conveniatis apud Dublin coram Johanne filio Galfridi justiciario Hiberniæ, (quem propter hoc ad partes illas mittimus) audituri voluntatem nostram super prædictis negotiis, quæ idem justiciarius vobis tunc vivâ voce plenius exponet, et cum aliis magnatibus terræ nostræ Hiberniæ, quibus id injunximus, super eisdem negotiis tractaturi, et consilium vestrum et auxilium adhibituri.

"Et vos, circa dictum diem, provideatis et deliberetis, quam honestè et potenter nos, in tam urgenti et inexcusabili necessitate, de bonis vestris velitis respicere; inducentes efficaciter subditos nostros quod nobis in tantâ necessitate et periculo munificè subveniant.

"Quia nullo tempore futuro tantum indigebimus, deo dante, subventione amicorum nostrorum quantum in præsenti indigemus. Testibus Alianora reginâ nostrâ, et Ricardo comite Cornubiæ apud Westm. xxix. die Decembris. Per reginam, comitem, et totum concilium."*

* A. D. 1253, Pat. 38 Hen. III. m. 8, in Turr. Lond.

On the Plea Roll of the fifty-third year of king Henry the Third, in Bermingham Tower, is enrolled the following statute, enacting the uniform use of the weights and measures of the city of London, regulating the sale of wine, and the wages of servants, in Ireland, viz:—

"Provisum et statutum est *de consilio domini* Roberti de Ufford, capitalis justiciarii Hibernie, et aliorum fidelium domini Edwardi, *qui sunt de ejus consilio*, et *de consensu omnium magnatum et totius communitatis Hiberniæ*, quod una et eadem mensura cujuslibet generis bladi, una et eadem ulna, sint de cetero per totam Hiberniam que sunt in civitate Londinii usitata et approbata. Et quod aliquis de cetero, qui aliqua vina habeat venditione exponenda dolium vini non vendat nisi ad precium quo poterit dimidiam marcæ lucri reportare. Et quod aliquis servientium qui bladum recipere, debet et consueverit pro pastu suo de cetero non recipiat nisi mensuram bladi, scilicet quarterium Londinii, ad duodecim septimanam. Et si aliquis serviens hoc contempserit, et ad recipiendum negligens fuerit, bene liceat domino suo illum per corpus suum castigare et imprisonare."

Henry the Third, having made his son, prince Edward, *lord of Ireland*,* all acts were done in his name.—This statute, therefore, was enacted by the lord Robert de Ufford, chief justiciary of Edward in Ireland, and the other faithful of the lord Edward, *who were of his council*, with the *consent* of all the magnates, and the whole

* In the 40th year of his reign, 1254, when a writ issued to legalize the prince's seal as the great seal of Ireland. Rot. Pat. 40 H. III. m. 12, in the Tower.

commons of Ireland. It is believed to be the first instance, in either country, of the enactment of a law in which the words so clearly express the *consent* of the magnates and all the commons, to the enactment of a law for any purpose but the imposition of a tax. The *commons* here mentioned, must have been the community of the barons, or of the tenants in chief of the crown, whether by a representation, or by summons to all, is not easy to say. It might, however, have been the special instructions to Ufford, the justiciary, that to legalize any statute made by him and his council, it should be necessary to have the consent of the magnates, and the whole *commune concilium regni*, as we have instances afterwards of writs from the king, directing English statutes to be promulgated and enforced in Ireland, without any reference to the authority of the Irish parliament. This statute, although passed with the avowed *consent* of the magnates and commons, may have had its force from the enacting power of the king, represented by, and vested in prince Edward, if the power of the justiciary and his council was limited, as suggested, and later documents render this more than probable; it, therefore, cannot be considered, standing alone, as conclusive evidence, that the legislative power, was vested any where but in the king, though it may be allowed to be evidence of the approximation to an alteration of the constitution of the country, which is sufficiently evidenced by what has been adduced, as to the state of the parliament of England at this period.

On the Pipe Roll of the 3d of Edward I. 1274, is an account of the new customs granted to the king by the

magnates of Ireland:—"Compotus novarum custumarum domino regi concessarum per magnates Hiberniæ."

These parliaments of Ireland, like those of England at the same period, consisted of the greater barons, and perhaps the representatives of the tenants of the crown in the counties. That the cities and boroughs were not then represented, may be inferred from a document in the ancient chartulary of the city of Dublin, called the "*Domesday Boke of Devylin Cittie*," of which the following is a translation:—

"To all persons who shall see or hear these presents, the mayor and citizens of Cork, send greeting in the Lord. Know ye, that we, in common council, by consent and assent, and of our voluntary will, have granted, for us and our successors, to the mayor and citizens of Dublin, the mayor and citizens of Waterford, the mayor and citizens of Drogheda, on the side of Louth, the mayor and citizens of Limerick, and the seneschal and burgesses of Drogheda, on the side of Meath, that if it shall happen, which heaven forbid, that any person, by whatsoever authority, shall attempt or presume to impugn, infringe, or lessen the liberties granted to them (*i. e.* Dublin, &c.) by charter from the illustrious kings of England, in whatsoever manner, in whatsoever places or times, or before whatsoever persons, ecclesiastical or secular, by reason whereof, for their defence or protection, expenses, charges, and labours, shall of necessity accrue, so often as we shall be required, we will afford them all counsel and assistance to the utmost of our power, saving the rights of our lord the king, and the faith and fealty to him due;

and for our apportioned share of the said expenses, rated according to the extent of the means of the said cities and boroughs, to uphold the liberties aforesaid, and in accordance with the provisions made by the said citizens and burgesses, we will be answerable to them without any difficulty or contradiction. It is also granted, and in common council ordained, that once in term, viz. on the morrow of the Holy Trinity, two or three of the most discreet persons of the aforesaid cities and boroughs, shall assemble at Kilkenny, to consider and treat of matters concerning their liberties, and to adjudge in what most convenient and suitable manner their said liberties may be best preserved uninjured; and if one or more persons belonging to the before-mentioned cities, or boroughs, shall presume to infringe this grant and ordinance, or shall fail to observe the form of the matters above set forth, he, or they, shall be held justly indebted to those who shall duly observe the form above-mentioned, in the sum of twenty pounds sterling, for their charges, expenses, and trouble. In such manner, that after he or they shall have been warned to pay the said twenty pounds, and shall fail to pay the same, then it shall be lawful for the parties observing the form aforesaid, to arrest the goods of the party not observing the same, wherever they shall be found, and, without any hindrance or contradiction, to levy in full out of the said goods, the said twenty pounds, and to execute their will and pleasure upon the same. In witness whereof, we have caused our common seal to be affixed to these presents, dated at Kilkenny, on the Friday next before the feast of the Holy Trinity, in the thirteenth year of the reign of king Edward."

The several documents executed by the mayors and superior officers of the other cities and towns within mentioned, agreeing verbatim with the foregoing, are in the same record.

If the cities and towns before-mentioned, were then represented in the parliament, these agreements for their mutual protection and safety, against contraveners of their rights and privileges, would not have been necessary or called for, and therefore, it may be considered a natural and conclusive deduction, that they were not then represented in the assembly then called the parliament, which was held in the very year these agreements were entered into.

The earliest mention of a parliament, by name, on the records of Ireland, is on the great Roll of the Pipe of 10 to 12 Edward I. 1281 to 1283, where the following entries are recorded in the Compotus of the county of Dublin :—
"*Magister Militum Templi c. solidis quia summonitus non venit ad parliamentum.*"

In the Compotus of the county of Tipperary for the same year, are the following:—

"*Petrus de Bermingham c. solidis, quia summonitus non venit ad parliamentum.*"

"*Galfridus de Prendergast c. solidis, pro eodem.*"

These parliaments were the king's high courts of justice.

In the thirteenth year of Edward I. the following memorandum is enrolled in the Red Book of the Exchequer of Ireland, and is also to be found on the Close Roll of the

same year:*—"Mem. quod die veneris in festo exaltacionis Sanctæ Crucis, anno regni regis Edw. 13, apud Wynton, liberata fuerunt Rogero Bretun, clerico venerabilis patris Stephani, Waterfordiensis episcopi, tunc justiciarii Hiberniæ, quedam statuta, *per regem et consilium suum edita et provisa*, viz. Statutum Westm. I. Statutum, post coronationem regis editum, et Statutum Glouc. et Statutum pro mercatoribus facta, et Statutum Westm. II. *in parliamento regis paschæ, anno predicto,* provisum et factum, in Hibernia deferenda et ibidem proclamanda et observanda."

The first are declared to be statutes enacted by the king and his council, the latter enacted in the king's parliament, *id est*, the king's court of justice, which were transmitted to Ireland, to be there observed as the law, although parliaments, or assemblies called parliaments, were held previously in that country.

On the Patent Roll, in the Tower of London, of 19 Edward I. m. 3, is a writ, dated at Bergavenny, 6 October, directed *omnibus fidelibus in Hibernia*, reciting that J. archbishop of Dublin, William de Valentia, earl of Pembroke, G. earl of Gloucester and Hertford, Roger le Bygod, earl of Norfolk and marshal of England, and many other barons and magnates, having lands in Ireland, had *freely granted to the king a fifteenth of the moveables of themselves and their tenants* in Ireland, to be discharged of other incumbrances, by which they were much burthened, *as in their letters patent more fully is contained*; that the king required them to pay the same to Thomas

* Claus. 13 Edw. I. m. 5, dorso.

Cantok, chancellor of Ireland, whom the king had appointed to receive it. "*Et quid nobis in hâc parte feceritis seu duxeritis faciendum, vestrum quilibet per suas literas nobis rescribat, ut ex hoc scire poterimus, in quanta fidelitatis et affectionis ardore erga nos geritis vestra vota.*" And the writ declared, that the grant should not be considered a precedent thereafter.

On the same roll, m. 3, is a writ as follows:—"Rex, omnibus ballivis et fidelibus suis ad quos, &c. salutem. Sciatis, quod cum dilectus et fidelis noster Theobaldus de Verdon, quintam-decimam bonorum suorum mobilium, necnon *hominum et tenentium suorum*, *infra* libertates suas in Hiberniâ, quantum in ipso est, nobis concesserit gratiosé, sicut ipse et alii fideles nostri in Anglia nuper fecerunt, volumus et concedimus, pro nobis et heredibus nostris, quod concessio illa prefato Theobaldo seu heredibus suis, vel hominibus eorumdem libertatum, aut iisdem libertatibus non cedat in prejudicium, vel trahitur in consuetudinem seu consequentiam in futurum. In cujus, &c. 10 Nov.

"Consimiles literas de data predicta habent Rogerus le Bigod, comes Norfolciæ et marescallus Angliæ, Richardus de Burgo, comes Ultoniæ, Agnes de Valentiâ, archiepiscopi, episcopi, abbates, priores, hospitularii, templarii, et alii ecclesiastici viri in Hibernia."

In this case the fifteenth was granted *by the letters patent* of the prelates, nobles, and lords of seignories for themselves and their tenants. From this, is it not evident, that *consent* to the grant was alone necessary on the part of the grantors, and that it might be expressed

either by a general meeting of the barons and tenants, or by their individual assent expressed by letters patent or otherwise? On an occasion, in the year 1300, it appears that the lord justice Wogan, went round to the different counties, cities, and towns, and obtained a grant individually from each community.

On the Plea Roll of the 25 Edward I. is a writ to the following effect:—Edwardus, &c. Sciatis quod commissimus majori civitatis nostre Dublin, et delecto clerico nostro Henrico de Cumpton, sigillum et contra-sigillum mercatorum in civitate nostra predicta, quamdiu nobis placuerit, custodiendum. Ita quod major pecia penes predictum majorem, et minor pecia penes predictum Henricum, remaneant, *et faciant juxta statutum de communi consilio regni nostri inde provisum.* Teste meipso apud Westm. 3 April, 20°.

An entry in the Black Book of the Church of the Holy Trinity, Dublin, of the year 1297, the 26th of king Edward the First, of the first importance in showing the component parts of the parliament, held in Dublin in that year, (if it can be relied on as evidence, and there can be but little question of its accuracy and weight as such,) shows that this parliament consisted of archbishops, bishops, abbots and priors, earls, and the rest of the *optimates* of the land, *i. e.* two knights elected in county court, summoned by the sheriffs, and two knights elected in the courts of the various liberties, summoned by the seneschals thereof, but no writs were directed to the cities and boroughs. The following is a translation of this curious and valuable document, which, though long, is too important to be omitted:—

"The justice, with the common council of our lord the king, *for the more firm establishment of peace in this land*, ordained and decreed a general parliament to be held here at this day, and to it were called the archbishops, bishops, abbots, and priors, *whose presence seemed to be necessary*, and also the earls and barons, and the rest of the most eminent of the land, to every one of them was commanded, that he should be here at this day, &c. and likewise the sheriffs of *Dublin*, *Louth*, *Kildare*, *Waterford*, *Tipperary*, *Cork*, *Limerick*, *Kerry*, *Connaught*, and *Roscommon*, and also the seneschal of the liberties of *Meath*, *Weysford*, *Katherlagh*, *Kilkenny*, and *Ulster*, were commanded, (directed) that each of them for himself, viz. the sheriff in his full county court, and the seneschal in his court of his liberty, by the assent of the county or liberty, to cause to be elected, two of the most honest and discreet knights of each county or liberty, who should now appear in this place, having full power for the whole community of the county or liberty, &c. to act and receive, &c. and that each sheriff and seneschal should be here in his proper person, &c. And Thomas, bishop of Meath, Nicholas, bishop of Leighlin, and Richard de Burgo, earl of Ulster, came, and Richard Taaffe, sheriff of Dublin, Walter Hachel, sheriff of Louth, &c. Walter Tronman, seneschal of Trim, &c. likewise came, and have returned their writs, and Walter de la Haye, and Eustace le Poer, elected by the commons of Kilkenny, George de Rupe, elected by the commons of Limerick, &c. came, and Nicholas, archbishop of Armagh, and the rest who were absent, excusing themselves, sent their proxies or attornies, viz. the aforesaid archbishop, J. and R. &c. And William, archbishop of Tuam, &c. did not come; and likewise Hugh de Lees, one of those elected for the county

of Limerick, &c. did not come, so they are *in miserecordia*. And in the presence of the said bishops of Meath, &c. and of the earls and barons, and others of the optimates, here appearing of the *common council* of our lord the king, in this land, there were made certain provisions, unanimously by all agreed to, *saving the right of our lord the king*, &c.

"Imprimis—Because the county of Dublin is much disordered, and many parts thereof, separated and dispersed at remote distances from the other parts, as well in Ulster and Meath, and elsewhere in Leinster, with the valley of Dublin, &c. by which they are less competent to do service to our lord the king, in his commands, and in his courts, and his people are not sufficiently governed or controlled. It is agreed, that there may be hereafter a sheriff in Ulster, as well as in the crosses, to make executions in the liberty of Ulster, when the seneschal of the same liberty shall be found in default, and that the sheriff of Dublin shall not hereafter enter into Ulster. It is also agreed, that Meath shall be a county of itself, as well the lands of the liberty of Trim, as the lands of Theobald Verdun, and all the lands of the crosses within the precincts of Meath. And that hereafter there shall be a sheriff there, who shall hold his county court at Kenlys, on Thursday after the county court of Dublin, and he shall do execution in the liberty of Trim, when the seneschal of the liberty shall be found in default. And the aforesaid Theobald de Verdun, for himself, and for Almaric de St. Amand, his tenant, and their heirs, grant, that they shall hereafter do suit and service in the said county court of Meath, upon condition of being ab-

solved from the suits and service they owed to the county of Dublin.

"It is also conceded, that the county of Kildare, which was lately a liberty connected with the county of Dublin, should also be a county of itself, including the cross lands, and all other lands of the lordship of Leinster, contained within its precincts, and shall be absolved altogether from the jurisdiction of the authority of the sheriff of Dublin, and shall have a sheriff for itself, as there is now for the county of Dublin, &c.

"Item—Because some magnates and others who possess certain lands in the marches near the Irish, and other lands in the peaceable parts, leave their lands in the marches waste, uncultivated, and without protection; and the Irish felons, by means of those waste lands in their marches, pass and repass freely to commit robberies, homicides, and other crimes and injury against the English, and return without arrest, or hindrance, or impediment, by which many marches are nearly destroyed, for the most part ruined, and the English inhabitants in subjection to these felons, or, as if they had fled into exile. It is agreed, that all tenants, under whose authority soever they may be, unless they adopt means and have guards placed in their lands in the marches, in proportion to the extent of their lands, to prevent malefactors passing those lands with impunity, and without prosecution, as often as it be necessary shall be distrained, by taking their lands into the king's hands, or in such other manner as shall seem expedient to the courts of our lord the king.

"As it frequently happens also, that felons escape with the prey, which they have taken in the peaceable lands, because all the inhabitants have not cavalry to follow them, as they ought to have—wherefore, it is agreed and granted, that each tenant who possesses twenty plough lands, either in the marches or in the peaceable land, whatever be his condition, shall have one horse completely armed, with other arms appertaining thereto, always ready in his house. That other tenants shall have hobbies and other horses unarmed, according to their ability. And as often as they shall be found any way in default, they shall be distrained, fined, and punished, at the will of the justices, sheriffs, or seneschals.

"Magnates and others also, who dwell in England, or elsewhere out of this land, and draw the profits of their lands out of this country, and send nothing for the preservation of their holdings, or their tenant's security, shall each of them immediately allow a competent portion to remain in the hands of their bailiffs, by which their property may be safely kept and defended, if war, or any disturbance of the peace, by any one, should happen to arise. And this shall be enforced, where need require it, by the distress of the sheriff or seneschals.

"Felons also, frequently escape with their prey, because people do not rise and assist their fellows, and some of them as accessaries, participate in the ruin of their neighbours, (who will justly deserve to suffer) stimulate and excite robbers, by permitting them to pass unmolested with their prey. Therefore, is it agreed and granted, that when thieves and robbers come into any part and take

prey, or do any other mischief—all persons, on notice, shall immediately they are able, arise and follow them with effect. But whosoever of the neighbourhood shall neglect to rise and attend, or be remiss in any respect towards our lord the king, shall be severely punished, and shall restore the property lost, in consequence of his negligence or remissness, and that at the discretion of the justice, who shall be appointed to hear the complaints.

"And because the commons of this land have hitherto been much aggrieved in expeditions by troops, which the magnates, without license, march through the midst of the peaceable country, and when there is no war in the marches; it is agreed and granted, that it shall not be lawful, hereafter, for any one, to lead troops out of their country, unless by the license of the chief justiciary, or by his command specially had, and then all those who attend their leader, shall receive such wages as shall be reasonable to support their journey. Whoever shall contravene this ordinance, shall be severely punished by the king, and shall restore all damage done, to be taxed by a competent jury of the neighbourhood.

"As the commons, also, are too much aggrieved by magnates and others, having kerns coming continually to be supported at the expense of strangers, as well in the marches as in the peaceable country, by which the people are exceedingly impoverished; therefore it is agreed and granted, that no one hereafter whoever, or of what authority or condition he may be, shall keep more kerns or idle men, than he himself is able and willing, at his own expense, to support; nor shall hire, or take any of these idle

men from any of his neighbouring lords, or other, by force against the will. That, if it be done hereafter, he who shall have any of such idle men, shall be seriously punished by the justice, sheriff, or seneschal, and shall restore the damage, and the idle men shall be taken and imprisoned, until he obtains the grace of the king's court, and without bail for his future good behaviour, he shall not be let out of prison.

"It frequently happens also, that Irish felons are made more able to effect wickedness by this, that when they purpose war, or intend to destroy any person, they procure a truce with the English, of their neighbourhood, to be given them for a certain time, that they may entirely and securely leave their home, and destroy others of their neighbours; and, having done so, it often happens that those same Irish, who at first appeared to be friends, within the time of the truce, besieged the forts, and destroyed and burned the manors. And to prevent the recurrence of these evils hereafter, it is agreed and granted, that it shall not, henceforth, be lawful to have or hold truces with the Irish, who are at war, or who are not in the king's peace, unless the truce shall be universal and equal with all, none of the faithful liege subjects being left out or excepted. And whoever shall take from, or grant any truce to the Irish, who are without the king's peace, shall be punished by our lord the king, as an accomplice in the evil committed by such Irish, and shall restore his part of the things lost, as is before said of the subject who was not willing to rise in arms against felons.

"Frequently also, the Irish are excited to war in this

manner, when they may be at peace, or have a general truce for a certain time, or have security granted them by the king's courts, some instigated by covetousness, envy, some vindictive cause, or to seize pledges insidiously, suddenly, or by night, rush into their lands where they burn and take prey, or take and carry away their husbandry, cattle, or men, although no evil had been done in their marches; upon which those Irish take arms, and sally forth to war, and that part of the country they believe to be the weakest, there they destroy, as well those who in no way participated in the evil done to them, or had consented thereto, as the friends and relatives of those transgressors; by which many places are so suddenly destroyed, that it rarely happens, any of the transgressors enter after into security to keep the peace of the marches. To prevent this evil in future, it is granted and agreed, that it shall not be lawful hereafter, for any one to invade, insult, or take any thing by force, or against their will, from any of the Irish, being in the king's peace, having a truce for a certain time, or having had granted to them security of the peace, while they those Irish keep the peace, under any colour or cause whatever; and if any presume to contravene this, he shall be punished severely by our lord the king, as a disturber of the peace; and, furthermore, he shall restore to the Irish the injury and loss, to be estimated by competent jury.

"It has also frequently occurred, that when the Irish have given their solemn oath to the chief justice, he being in remote parts, to abstain from sudden irruptions, few, or none are to be found ready to resist, re-

press, or interrupt their misdeeds, by which, very often, the lands of the marches are frequently devastated. To prevent this evil in future, it is agreed and granted, that immediately, as soon as the Irish, by homicide, burning, or taking preys, shall commence war, all persons dwelling in the county or liberty where these Irish dwell, and also their neighbours of the confines of their marches, with one accord, and simultaneously, shall rise against the Irish, and maintain the war against them at their own expense, until the Irish be reduced to peace, or may have obtained a truce from the magnates of that district, to whom power is given for that purpose, or that the chief justice otherwise may be induced to ordain. And he who shall not be obedient to this ordinance, shall be distrained by the justice, sheriff, or seneschal, and shall be punished for his rebellion, demerits, and offence.

"The Irish also, by the density of the woods, and the depth of the adjacent morasses, (*bogs*) assume a confident boldness in sudden delinquency, chiefly on the king's high-way, in places so overgrown with wood and so thick and difficult, that scarcely even a foot passenger is able to pass; by which the Irish, when the mischief is done, retire into some bog or wood, which they are able to pass although the English inhabitants are not able to pursue them, and not being followed, they often escape without injury; or if they suffer themselves to be approached, are able to avoid being apprehended by their pursuers. Upon which, it is ordained and granted, that the lord of the woods, with his tenants, through which the king's high-way was anciently, shall sufficiently clear the passage where the king's high-way ought to be, and at

their expense shall cut and shorten the wood, so as to make the way wide enough, and quite clear from underwood and trees, as well standing timber as laying down. But if the lord of the place and his tenants, where a pass ought to be cut, be not able, without great injury, to undertake the cost of the cutting of any grove, then our lord the king, or the chief justice, shall have the assistance of all the adjacent country. And if the lord of the soil and his tenants, shall neglect to do this, they shall be distrained by the sheriff, until they perform it, or the chief justice shall cause it to be done at their expense; and furthermore, they shall be severely punished by our lord the king. They shall also repair bridges, and foot-bridges, in their district, as they ought and have been accustomed to do; and where either bridges, or foot-bridges have been broken down or decayed, and he, who has been held liable to repair them, be not equal to so great an expense, he shall be relieved by the country, who shall supply the means to defray the expense in common for this business; but the tenant who ought to keep them in repair, shall, when he is able, return to every one the assistance he received. The chief justice shall punish severely all rebels and others who shall be found acting contrary to this ordinance. Likewise, the whole community of Leinster, which *was lately but one liberty*, shall assist and contribute to the maintenance of the war against the Irish, when unanimously declared by the council, and those who oppose and contradict, shall be severely punished.

"The English also, who in modern times are become degenerate, in using the Irish vestments, and having the hair of the head half shaved, and preserving and allowing

the hair at the back of the head to grow long, which they call the *culan*, conforming themselves to the Irish both in habit and face, by which it frequently happens, that the English are taken for, and reputed Irish, and slain; although divers measures have been devised for punishing the killing of either the English or Irish, yet by these homicides much enmity and rancour has been fomented. The relations also of those who have been slain, have often taken revenge alternately, as enemies; and for that reason, it is agreed and granted, that every Englishman in this land, in the head and countenance, shall immediately adopt the manners and tonsure of the English, and shall not again presume to turn back the hair into a *culan*, and if he shall do so, the justice, sheriff, or the seneschal of the lord in whose liberty the said Englishman shall be found, and their stewards, shall distrain them of their goods and chattles, and also, by arresting their bodies, and imprisonment, if it be notorious that they wear the Irish dress; and shall compel them immediately to relinquish their hair. Neither shall any one in future plead as an Englishman, having the Irish dress, but shall answer as an Irishman, if, in a similar case, a question shall arise.

"There shall be assigned hereafter in each county and liberty, where the Irish dwell, two magnates, who, with the chief justice, in distant parts, shall be authorised lawfully to treat with the Irish for a good peace; and, if it shall be for the common good, they shall also be authorised to make a general truce on good security, but they shall notify to the chief justice what is done clearly and openly, that the justice may provide for the occasion, as he shall think fit to ordain."

This parliament was held in the year 1297, the twenty-sixth year of Edward the First, for on the great roll of the Pipe of that year, the accounts of Walter Hache, sheriff of Louth, and Richard Taaffe, sheriff of Dublin, appear. The other individuals mentioned in the proceedings of the parliament, also appear to have been then living, by other records; the writs issued for summoning this parliament do not occur on any of the Close Rolls, or other records of Ireland. They might have been, and no doubt were, on the lost Rolls.

Among the records of Birmingham Tower, of the 27th of king Edward I. are *placita parliamenta*, and *communia placita*, all made up together in one roll. It commences with "Communia placita, capta apud Dublin, coram Ricardo de Burgo, Comite Ultoniæ, tenente locum Johannis Wogan, cap. justic. Hiberniæ, &c." Then pleas at Kildare, before John Wogan, in Hilary Term, 27 Edw. I and on membrane 29, "*face, Placita parliamenta, apud Dublin, coram Johanne Wogan, cap. justic. Hiberniæ et consilio regis*, &c. a die Paschæ in 15 dies. a. r. r. Edw. 27°." In this *parliament* several ordinances were made, one against the importation of Pollard and Croccard money, and for the regulation of the currency—another for the regulation of servants' wages—and a third, against depasturing pigs on the Curragh of Kildare. A petition of the mayor and bailiffs of Cork, to be allowed £12. 10s. 4d. in the Exchequer, which they had paid, on the king's precept, for freight of a certain ship called the *Snake*, for victuals sent in her for the use of the king's army in Gascony. A grant made to the prior of All Saints, Dublin, of four large oaks out of the king's forest of Glencry, to repair his mill and bridge at Steyne. And a grant to the

constable of the castle of Kildare, of £20. for the custody of that castle. On membrane 23, also, are *placita parliamenta*, consisting of petitions, pleas, and writs, not of much importance. On the last membrane are certain ordinances made at Rathwyer in Meath, Le Naas and *Moun in Leinster*, in the summer of the 27th year of king Edward the First, in the presence of John Wogan, justiciary of Ireland, Richard, earl of Ulster, Theobald de Verdun, Thomas Cantok, chancellor, Walter L'Enfaunt, justice, Peter Fitz-James de Birmingham, Simon de Geneville, (lieutenant to Geffery de Geneville in Trim) "*et aliorum magnatum et proborum hominum de Midia et Kildaria:*" "That the said Peter Fitz-James de Birmingham, should have *auxilium ad guerram*, against his enemies of Offaley, viz. four hundred men at the wages of the county for forty days," &c. There are also many entries of proceedings by W. Leynde, *qui sequitur pro domino rege*, to recover wines forfeited to the king, and other matters respecting the revenue.

On the Roll of Assize, before Sir John Wogan, justiciary, in the office of the chief remembrancer of the Exchequer of Ireland, of 28 Edward I. 1299–1300, are enrolled, "*Placita de parliamento apud Dubliniam, a die Paschæ in* 15 *dies, anno regni regis Edw.* 28°," among which is a writ as follows:—"Edwardus, &c. *comitibus, baronibus, militibus, et ceteris fidelibus suis per terram Hiberniæ constitutis,* salutem. Sciatis quod cum ad salvationem coronæ nostræ regiæ communemque regni nostri et terrarum nostrarum utilitatem, jam ordinamus et proponamus esse in proximo festo Nativitatis Sancti Johannis Baptistæ apud Karliolum cum equis et armis,

et subsidio magnatum et procerum nostrorum ad proficiscendum exinde ad rebellionem Scotorum inimicorum cum dei auxilio repremendam, vestro auxilio et subsidio indigemus, ad quod negotium commodius exequendum, delectos et fideles nostros Johannem Wogan, justiciarium nostrum, et magistrum Thomam de Cantok, cancellarium nostrum Hiberniæ, unacum baronibus nostris de scaccario Dublinii, assignavimus ad petendum et requirendum, nomine nostro, a vobis et quolibet vestrum, subsidium, quod ad tam ardui negotii felicem consummationem ac nostri ac vestri commodum et honorem videbitur opportunum, et ad omnia alia et singula facere que prefatis justiciario, cancellario, et baronibus, seu aliquibus ex ipsis adhuc vacare contigerit super premissis et ea contingentibus viderent facienda. In cujus, &c. Teste meipso apud Blydam, 18° die Januarii, a. r. n. 28°.

" Mandavit etiam consimilia brevia omnibus *civitatibus et burgis,* per totam Hiberniam.

" Propter quæ justiciarius summoneri fecit generale parliamentum apud Dublin, in quindena Paschæ, viz. Quod prelati et magnates omnes venirent ibi in propriis personis, &c. et quod communitates comitatuum, per *duos, tres,* vel *quatuor,* ad hoc per ipsos electos, *et specialem potestatem habentes, ac si omnes fuissent presentes et* similiter communitates civitatum et burgorum per *duos vel tres,* &c.

" Sed justiciarius, ante parliamentum illud, decrevit alloqui majoribus et probioribus hominibus civitatum et burgorum, occasione predicti subsidii, et primo venit apud

Droghedam, scilicet in vigiliis dominicæ in Ramis Palmarum, ubi porrectis literis domini regis majori et communitati burgi illius, per ipsum dominum regem directis, et habito cum eis super hiis diligenti tractatu, predicti major, ballivi, et communitates ex utraque parte aquæ, promerendam benevolentiam domini regis, et gratiam de mercandisis quæ emerunt per monetas inhabitas, &c. obtulerunt domino rege, cclx. marcas, unde super villam ex parte Uriel, cc. marcas, et super villam ex parte Midiæ, lx. marcas, et exinde prefatus justiciarius circumivit civitates et burgos, &c.

" Et major, ballivi et communitas civitatis Dublin, concesserunt domino regi ad predictum subsidium, cc. marcas.

" Et communitas burgi comitis Norfolciæ de Ros, concesserunt domino regi, xl. libras.

" Et civitas Waterford, c. marcas.

" Et villata de Kilmedan, in eodem comitatu, c. sol.

" Et villata de Athmetum, in eodem com. c. sol.

" Et villata de Stratbally, in eodem comitatu, quinque centenas piscium pretii, c. sol.

" Et villata de Dungarvan, in eodem comitatu, 15 centenas piscium pretii, xv. lib.

" Et communitas civitatis regis Lemricensis, xl. marcas.

" Et villata de Imelagh, in eodem, com. xx. marcas.

" Et civitas regis de Cork, cclx. marcas.

" Et villata Gilberti fitz Thomæ de Clare de Yoghil, in eodem com. xl. lib. et quinque centenas piscium pretii, c. s.

" Et villata archiepiscopi Casselensis de Cassell, in comitatu Tipperariensi, xx. lib.

" Et villata Otonis de Grandison de Clonmell, xii. marcas.

" Et villata Prioris de Atthissell de Atthissell, quinque marcas.

" Et villata regis de Carrick, xl. s.

" Et villata de Artfynan, in eodem comitatu, præter tenentes Hospitalis, xl. s.

" Et villata de Nenagh, xl. s.

" Et villata de Moydufny, i. marcam.

" Et villata de Thurles, xl. s.

" Et villata de Fetherd, x. marcas.

" Et villata de Moydissell, in eodem com. xl. s.

" Et burgus de Kilkenny, xl. lib.

" Et postea ad predictum parliamentum venerunt, et communitates in forma demandata, et diversi de eis se excusantes a præstando subsidio, petierunt quod justiciarius iret per patrias, et ipsi libenter forent in auxilium quod communitates in propriis personis suis concederent se præstare subsidium, et ipsi magnates, præter prelatos, similiter cum eis contribuerent, &c.

" Et justiciarius eis consentiens, primo ivit apud Trim, in libertate Galfridi de Geynevill, ubi communitas veniens et habito cum eis diligenti tractatu, &c. concesserunt ad predictum subsidium, cc. marcas, et in crastino communitas comitatus Midiæ, veniens ibidem, præter crocias, &c. concesserunt similiter, &c. ccc. marcas.

" Et communitas crociarum Midiæ, præter tenentes abbatum de Melifont, de Diveleck, et archiepiscopi Ardmachani, xx. libras.

" Et tenentes predicti archiepiscopi in Midiâ de te-

nentibus suis de Arcagh, x. marcas, et tenentes suis de Kilmoon, x. marcas.

" Et tenentes predicti abbatis Sancti Thomæ de Diveleck, xl. s.

" Et communitas comitatus Louth, præter tenentes predictorum archiepiscopi et abbatis de Mellifont, concesserunt, &c. lxxx. libris.

"Et tenentes predicti archiepiscopi, in predicto comitatu, xx. lib.

" Et tenentes predicti abbatis, in predicto comitatu, xx. lib.

" Et communitas comitatus Dublin, præter libertates et tenentes religiorum et crocearum, c. lib.

" Et tenentes crociæ archiepiscopatus Dublin, cum forensecas tenentibus de eodem feodo, præter villam Sancti Sepulchri, Dublin, c. marcas.

" Et tenentes prioris Sancti Johannis extra Novam Portam Dublin, xl. s.

" Et tenentes prioris Sanctæ Trinitatis Dublin, c. sol.

" Et tenentes abbatis Sanctæ Mariæ Dublin, xl. sol.

" Et tenentes abbatissæ de Hoggys, Dublin, ii. marcas.

" Et tenentes crociæ Ferniensis, xii. marcas.

" Et tenentes crociæ Leighlinensis, vi. marcas.

" Et tenentes crociæ Ossoriensis, marcas.

" Et communitas libertatis Wexfordiæ, lxxx. marcas.

" Et tenentes de Offelmeth, in libertate Katherlagh, præter abbias, x. lib.

" Et tenentes Johannis de Hastings, in Oboy, in eadem libertate, iiii. marcas.

" Et tenentes de Obartory, in eadem libertate, cum villa de Katherlagh, x. marcas.

" Et tenentes de Fotherid, in eadem libertate, xx. mar.

" Et tenentes de Odroon, in eadem libertate, xx. marcas.
" Et tenentes libertatis Kilkenniensis, c. lib.
" Et communitas comitatus Kildariæ, c. marcas.
" Et communitas comitatus Waterfordiæ, præter predictas villatas, c. lib.
" Et communitas comitatus Cork, præter villatas mercatorias, cc. lib.
" Et communitas comitatus Limerick, præter villatas mercatorias, cc. marcas.
" Et communitas comitatus Tipperariensis, præter villatas mercatorias, cc. lib.
" Et villata de Athdare, in com. Limericensi, v. marcas.
" Et villata de Rathgal, in eodem com. xl. s.
" Et villata de Inskefty, xl. s.
" Et villata de xl. s.
" Et villata de Dermoth, in eodem com. v. marcas.
" Et villata de Aisy, xl. s.
" Et villata de Grene, xx. s.
" Et villata de
" Et sciendum quod tenentes de crocia Momonia, concedunt quod ipsi de suo quantu sua de libertate sua, et non occasione alicujus tur in crociati et sub tali forma quod non consuetudine alias, &c. et eis concedetur."

This very singular and extraordinary proceeding, is enrolled among the *Placita Parliamenta*, in consequence of the king's writs, the first of which was directed to the *earls, barons, knights, and the rest of the king's fideles, established in his land of Ireland*, demanding a subsidy to

assist him in his expedition to Scotland. The like writs were directed to the cities and boroughs of all Ireland. In order to obtain the grant of the subsidy, the justiciary summoned a general parliament to meet at Dublin, in fifteen days of Easter, and directed that all the *prelates and magnates* should *come in their proper persons;* that the commons of the counties should appear by *two*, *three*, or *four* individuals, by them to be elected, having special power to act, as if all were present; and that the cities and boroughs should likewise *elect two*, or *three*, in like manner, to appear to express their assent.

But the justiciary, *before the parliament met*, determined himself to confer with the mayors and honest men of the cities and boroughs respecting the said subsidy, and, therefore, went to each and every of them in person, and having called them together, and informed them of the king's wants and wishes, prevailed on them to grant a subsidy individually: from some, money; from others, five hundred weight of fish, of the price of five pounds; from others, both money and fish. The cities of Waterford, Limerick, and Cork, are called *the king's cities*, Youghal is called the town of Gilbert Fitz-Thomas de Clare, Cashel, the town of the archbishop; most of the others are market-towns of little note or character with the exception of Kilkenny.

These proceedings on the part of the justiciary, clearly demonstrates the unsettled and uncertain constituent parts of what was then *called a parliament;* for he, having felt it prudent to apply to them individually for their contri-

butions, their representatives *did not afterwards attend the parliament* when it met.

The magnates and representatives of the counties met, and excused themselves from granting the subsidy, but requested the justiciary himself to go to the counties, or countries, *(patrias)* and that they would freely give their assistance and influence, to prevail on the commons of the counties, in their proper persons, to grant the subsidy, and that the prelates and magnates would likewise contribute. The justiciary consented to this proposal, and went to Trim, in Meath, then the palatine liberty of Geffery de Geneville, and afterwards to the other places mentioned in the foregoing document.

Nothing can more clearly exhibit the inchoate and incomplete character of the parliaments at this period, *as legislative bodies*, than this document. Here first principles were acted upon in the simplest possible way, each community granted for itself. The whole proceeding shows that *consent only* to the grant of the subsidy was required of the commons, for the justiciary applied to the cities and boroughs without waiting the meeting of parliament, and when the lords and the representatives of the counties did meet, they recommended that the same plan should be adopted with respect to the counties, which was accordingly done.

The circumstance of the counties, cities, and boroughs, having the option of electing *two*, *three*, or *four* representatives, shows that their functions were confined to

their *consent*, and also that the *general parliament* of that day was merely a meeting called by the king to grant him a subsidy; the word parliament, in its common acceptance, meant the *aula regis*, or king's high court of justice, where his ordinances and decrees, which are now called statutes, were enrolled, and consisted of his greater barons, including the archbishops, bishops, and such of the abbots and priors, as possessed baronial authority in their respective liberties.

The enrolment of these proceedings among the *Placita Parliamenta*, was probably necessary to legalize the transactions, but very little of them could properly be called *proceedings of parliament*, yet they are here recorded among the pleas of parliament, in the same way as the statutes and ordinances of the king and his council, are on the rolls of the pleas of parliament, or king's high court, in England.

CHAPTER XII.

EARLY COUNCILS AND PARLIAMENTS OF IRELAND.

On the Placita Querela Roll (of 1 and 2 Edward II.) before John Wogan, justice of Ireland, is a writ dated at Langley, 6 June, commanding the statute of Winchester to be proclaimed in every city, borough, and market-town in Ireland.

The first enrolment of writs for a parliament of Ireland, is on the close roll of the third year of king Edward the Second, which, although a record of chancery, is now in the office of the chief remembrancer of the exchequer. It was directed to Richard de Burgo, earl of Ulster, and eighty-six other barons, or, as they are described in the writ, *Men in Ireland—Hominibus in Hibernia.* Writs were also directed to the sheriffs of the counties, and the seneschals of the liberties, to elect two knights, and to the mayors, and other chief officers of the cities and boroughs, to elect two citizens and burgesses, to represent them in this assembly; the names of the counties, cities, and boroughs, to which writs were sent, are not given on

the roll, but the fact of their issue is mentioned generally. The writ and list of those summoned will be found in the appendix. This assembly, as to its component parts, seems to have been a regular parliament; in it were enacted the first statutes, printed in the authorised edition.

In the year 1316, a petition was presented to the king and council in England, setting forth on the part of the English of Ireland: that they had a law by which an Englishman, when convicted of the murder of an Englishman, or of robbery, arson, or theft of any thing of the value of twelve-pence halfpenny, ought to suffer death; but, that when an Irishman was convicted of the death of an Englishman, or for arson, or theft, or depredation, it was left to the discretion of the judge either to permit him to be ransomed for a sum of money, or to condemn him to execution. That whilst the said law was duly observed, the English people multiplied, their possessions increased, and the limits of holy church were extended. But, that afterwards, when the justices assumed to themselves power and authority to permit those condemned to be ransomed for a trifle, or *aliquando pro nichilo*, videlicet, taking for the death of an Englishman feloniously slain, one hundred pounds; for depredation, one hundred and forty shillings, and for theft, twenty shillings: in consequence of which hope of easy pardon, the evil doers had become very bold and audacious in the perpetration of homicides, depredations, burnings, and other felonies; agriculture had ceased in many places; trade had fallen to a low ebb, and the country was very much impoverished; and farther, that the faithful people dared not indict, accuse, *or, when on a jury, give their verdicts against these*

felons; through fear of being destroyed by them; for that, therefore, on being set at liberty on such easy terms, they again committed homicides, burnings, thefts, and depredations, to the great destruction of property as well as life. The honest people moreover, who desired to live in peace and under law, were leaving their homes where they had been accustomed to dwell, to be possessed by the very felons who had committed these enormities; and holy church, whose influence had been diffused far and wide, under the peaceable administration of the aforesaid law, was now nearly utterly destroyed. The king thereupon, issued a writ to the justiciary, chancellor, and treasurer of Ireland, directing a parliament to be held once in each year, and that if such a pardon, or redemption, should be solicited from the lord justiciary, for the feloniously slaying of an Englishman, or for burning, it should not be granted, unless with the consent of the faithful lieges in parliament; and that then, at least, one hundred pounds should be paid to the king's use, for the slaughter of an Englishman, and for a pardon of theft or robbery, to the value of eleven-pence halfpenny or upwards, there should be taken four times the amount stolen, and that the felons should remain in gaol until the money was paid into the Exchequer.

The writ also directs, that the archbishops, bishops, abbots, priors, earls, barons, and the commons of the land, should be summoned to a parliament as speedily as could be done, whose advice and counsel should be demanded on the above matters, and if from a lawful cause they cannot meet, then a writ under the great seal of Ireland, should be directed to each of the most discreet of the prelates

and magnates, who were to give their opinions, "*nominatim et separatim*," whether they thought the country would be most benefited by the administration of the law before mentioned, or by the remedy proposed, of giving pardons only in parliament.

The writ also directs, that whatever should be decided by the council and the *fideles*, respecting these matters, should be certified without delay, under the great seal, to the king; and being so certified, *the king in his council*, would ordain a remedy which would strike terror into the delinquents, and restore the people of the land to prosperity.

These instructions for the holding of the parliaments of Ireland, elucidate the nature of the contemporary assemblies in England; a parliament was on this occasion directed to be held once a year in Ireland, in which *pardons were to be granted*, that is, the lord justiciary was not to grant a pardon without their consent; and in the parliament directed to be immediately summoned, if they did not meet, the opinions of the most discreet of the prelates and magnates were to be taken *separately* as returns to their individual writs, and certified to the king, who therefrom would compose and enact a law. It is to be observed, that this was done before the celebrated statute of the 15th of Edward II. passed in England, and while Edward was under the tuition of the lords ordainers.*

The document also exhibits the singular and remarkable fact, that five hundred years since, the prosecutors and

* See page 140.

jurors of Ireland, in doing their duty, *ran a risk of destruction from the vengeance of the criminals and their friends*. The original document will be found in the appendix.

A parliament was held at Dublin, at Easter in the 17th year of Edward the Second, Sir John Darcy, being then lord justiciary, in which was enacted a statute confirming the ordinances of Dublin, and other statutes; this being unpublished, and of an extraordinary character in the way of an indenture of agreement between the king's justiciary and council and the parliament, a translation is here given at length:—

"It is agreed, undertaken, and assented to by the prelates, earls, barons, and all the common people, in full parliament at Dublin, in the month of Easter, in the seventeenth year of the reign of our lord the king, Edward, son of king Edward, in the presence of the justice, chancellor, treasurer, and all the others of the council of our lord the king in Ireland, that the common law, the ordinances of Dublin, and the good usages of the land, should be held and maintained in all their points. And in amendment of these things, the said earls, barons, and other *grandees of birth*, for the pleasure of God, holy church, our lord the king, and the common people, have granted and undertaken, that before the next parliament they will take, or cause to be apprehended, all felons, robbers, and thieves of their families or surname, and their adherents, in all their neighbourhood, *saving their oaths;* and all other felons and notorious malefactors who shall be found and received in their lordships, in the peaceable lands, at

their own costs; and in their county courts, where they promise to find and take the said felons and malefactors, *saving their peril of their bodies or costs*, or cause those who shall be afterwards taken, to be removed, and made amenable to the court of our lord the king, to be tried; saving the reasonable estate and franchises of the said lords. And the said earls and grandees also pray, that it may be provided and assented to, that the sentence given some time past, at Kilkenny, in form of holy church, against all crimes and trespasses, shall be respited until the next parliament; which prayer all the prelates, the justice, and others of the council, granted. In testimony of which things Monsieur Richard de Bourke, earl of Ulster, Monsieur Thomas le Fitz-John, earl of Kildare, Monsieur John de Birmingham, earl of Louth, Monsieur Maurice le Fitz-Thomas, Monsieur John de Barry, Monsieur John le Poer de Donoyll, Monsieur Arnold le Poer, Monsieur Thomas le Boteller, Monsieur Richard de Tuit, Monsieur Nicholas de Verdon, Monsieur Morice de Rochfort, Monsieur Raymond Lercedekne, Monsieur Thomas de Dene, Monsieur Richard le Waleys, Monsieur Robert Fitz-Mathew de Canteton, George de la Roche, and David le Fitz-Alexander de la Roche, to that part of this indenture, remaining with our lord the king, have put their seals, and to the part remaining with the said grandees, our lord the king, has put his seal. Given at Dublin the day and year aforesaid."*

This *full parliament* is here stated to consist of the prelates, earls, barons, and *all the common people*, but as the

* Original in Appendix.

matter to be granted concerned only the earls, barons, and other *great people of birth*, "*autres graunts de lynnage*," it is they alone who concur in the grant, as if the others were neither interested or bound by the enactment. And it is farther remarkable, that the earls and *graunts*, pray the eclesiastical sentence lately pronounced at Kilkenny, against trespassers, should not be renewed till the next parliament, which the *prelates*, *the justice*, *and others of the council granted.* It was also agreed, that the *common law*, the ordinances of Dublin, and good usages of the land should be established and observed in all their points; this was in contra-distinction to the Irish customs, which at that time had begun to be adopted by the Anglo-Irish.

The ordinances of the staple were transmitted to Ireland, the 19th year of king Edward the Second. They are in the French language, and their introductory and concluding clauses show them to be the act of the king and his council, viz:—

"Ces sont les ordeinaunces de le staple Dengleterre, Irelande, e Gales, fetes en le temps le rey Edward fitz le rey Edward, l'an de son regne dis e neufieme.

"Edward, par la grace de dieu rey Dengleterre, seigneur Dirland, et duc Daquitayne, au Meir de sa cite de Dublin, salutz. Nos vos mandons fermement enjoinauntz que les choses de south escrites ordeine par nous e nostre conseil, pur common profit e esement du poeple de tut nostre roialme, et par face crier et publier et fermement tenir et garder, en nostre cite avaundit, e par tut en vestre baillie, &c. &c. En testmoignaunce de quele

chose cestes nos lettres overtes faites ensealer de nostre seal. Donez a Keneylworth le primer jour de Maii l'an de nostre regne, xix."

This statute, or ordinance, was made by the king and council for England and Wales as well as for Ireland.

The contemporary circumstances which influenced the construction and acts of the legislative assemblies, or parliaments of England, should be kept in mind when we are considering those of Ireland, which followed close in adopting innovations, improvements, and alterations, and, with very few exceptions, took the complexion of politics invariably from England. Ireland in those ages, from the difficulties of communication, might be considered, in relation to England, as a distant country, and often the violence and prevalence of westerly winds interrupted the communication for months, whilst the constant presence of a restless and unconquered enemy, placed the whole island in the state of frontier marches; in addition to the evil of rebellions and civil wars in England, arising from disputed succession to the throne, the attempts at continental and Scottish conquest prevented the perfect settlement and subjection of Ireland, a country of more real and substantial value to England, than the most successful attempts elsewhere could have acquired. The chief governors, therefore, were driven to expedients which, in a more settled state of affairs, would not have been thought of: the power given by their patents was generally ample for executive purposes, but very limited as to legislation, which power was not allowed but by special writs, directing parliaments to be called, generally for the purpose

of granting subsidies, but sometimes to have their advice as to the expediency of certain enactments, on which the king exercised his judgment in making laws, by the advice of his English council, who accepted, modified, or rejected the suggestions of the Irish parliament at his pleasure. The early years of the reign of Edward the Second may be said to have been under the government of the lords ordainers, and the formation of the legislative body into lords spiritual and temporal, and commons, in his fifteenth year, is a remarkable era in the history of the constitution; for though for many years after its enactment, it seems to have had but little influence on the practice of legislation, yet it became, like the great charter, a point of reference, on which the constitution eventually settled. The division into two houses, it would appear from the records of parliamentary practice, did not take place till the reign of Henry the Fourth.

A parliament was held in Dublin in Hilary Term, 2 Edward III. as appears by an entry, on the great roll of the Pipe, of the account of the sheriff of Dublin of that year; and it also appears that the prorogation was announced by writs. Philip le Bret, sheriff of Dublin, was allowed in his account twenty shillings, which he paid to various messengers employed to summon a parliament.

"Predictus Philip, reddit compotum de xxs. quos liberavit diversis nunciis diversa brevia domini regis portantibus diversis prelatibus, proceribus, magnatibus, majoribus, prepositis, superioribus, et ballivis terræ Hiberniæ, ad parliamentum domini regis summonendum, in termino Sancti Hilarii, anno regni regis nunc 2d°, per breve domini

regis, quod est allocutum inter tallias hujus compoti. Et eisdem xxs. iii. den. quos liberavit diversis nuntiis diversa brevia D. R. portantibus eisdem, pro predicto parliamento prorogando, per breve D. regis, quod est allocutum inter tallias hujus compoti."

At a parliament held at Kilkenny, before Roger Outlaw, on the morrow of the translation of St. Thomas the martyr, 4 Edward III. the following peers were present :—

" Alexander, archbishop of Dublin,
William de Bourke, earl of Ulster,
James le Botiller, earl of Ormond,
Monsieur William de Bermingham,
Monsieur John le Fitz-Robert le Poer, et aultres feals nostre Seigneur le Roy."

On the Plea Roll of 4 Ed. III. is the following entry :—

" Quia compertum est, per inquisitionem coram prefato locum tenente captam, quod Reymundus L'Ercediackne, ad parliamentum domini Edwardi, quondam regis Angliæ, patris domini R. nunc, apud Dublin, scilicet a die Pasche in unum mensem, anno regni predicti patris 20° summonitus, propter guerram Hibernicorum, accedere non potest, concessum est, per predictum locum tenentem et concilium domini regis, quod ille quadraginta librarum, in quibus idem Reymundus, occasione predicta amerciatus fuit, pardonatus. Eidem Reymundo mandatum est cancellario, &c. quod habeat breve domini regis, et baronum de scaccario Dublin, quod ipsi dicta quadraginta librarum ex rotulis Scaccarii predicto extrahat, et ipsum inde omnino quietum faciat," &c.

On the same roll is recorded a suit between Walter Ultagh, and Thomas de Penkiston, for ten shillings of silver, in which the defendant pleaded that he ought not to be compelled to answer the plaintiff, *quia est Hibernicus.* Ultagh replied, that "*dominus rex statuit in parliamento suo quod omnes Hibernici, ad pacem domini regis existentes, respondentur ad communem legem*, &c." The court decided in favour of the Irishman.

In the Rolls Office, Dublin, is a membrane containing three statutes of the parliament held at York, 9 Edward III. transmitted *for observation* in Ireland.

By an entry on the Plea Roll, in Birmingham Tower, of the 21st of Edward III. it appears that a parliament was held at Kilkenny in fifteen days of Michaelmas, in the 20th of Edward the Third, which granted the king a subsidy, to enable him to carry on war against his Irish enemies and felons, of two shillings out of every caracute of land, and twelve pence out of every half caracute; and, if a person had not half a caracute of land, but possessed goods to the value of sixty shillings, twelve pence.—Collectors were appointed for this subsidy in the counties of Dublin and Meath, the liberty of Trim, the counties of Kildare, Carlow, Kilkenny, Wexford, Waterford, Tipperary, Limerick, Cork, and Kerry. On the same roll are the proceedings against Richard, bishop of Emly, Ralph, archbishop of Cashel, Maurice, bishop of Limerick, and John, bishop of Lismore, for hindering the collection of the above subsidy. On the 7th January, 20 Edward III. 1346, they had decreed and ordained, that any clergyman, of their province, who paid the subsidy, should be deprived

of his benefice, and stripped of his gown, and any layman who contributed should be excommunicated, with his children for three generations.

The bishop of Lismore went to Clonmell, on Thursday after the feast of the Purification, *in pontificalibus*, and, in the middle of the town excommunicated and declared excommunicate, all contributors to the subsidy.—"In medio ville de Clonmell, et excommunicavit et excommunicatos pronunciavit omnes et singulos dictum subsidium concedentes, imponentes, et procurantes, vel talliagium facientes, necnon scribentes, dictantes, levantes, recipientes, vel eisdem considentes, auxilium vel favorem prestantes, &c." For these proceedings the crown sued the bishop for damages, which were laid at £1000. The bishop pleaded not guilty, but was convicted.

On the Plea Roll of 21 Edward III. is the following entry:—"Quia prelati, cleri, viri religiosi, *et communitates caritatis*, concesserunt domino regi quoddam subsidium ad resistendum malicæ O Morth, et aliorum Hibernicorum felonum domini regis, qui contra ipsum dominum regem hostiliter de guerra insurrexerunt, videlicet:—
Cleri Midensis, xl. lib.
Communitas comitatus Loueth, xx. lib.
Prebendarii Ecclesiæ Sancti Patricii, Dublin, xl. marc.
Prior Hosp. S. Johannis Jerusalem, in Hibernia, xl. marc.
Cleri Ossoriensis diocesis, xx. lib.
Cleri diocesis Fernensis, x. lib.
Abbas Domus B. Mariæ de Baltinglas, x. marcas,
quas quidem pecuniarum summas mittentur in exitiis ad Scaccarium ..... Sancti Michaelis, anno, &c. xx."

Richard, bishop of Ossory, excommunicated the king's officers, who collected the subsidy granted by this parliament, for which he was indicted, found guilty, and his temporalities sequestered into the king's hands.

On the great roll of the Pipe, No. 58, is an account of William de Epworth, and William de Cogan, collectors of this subsidy in Munster, as follows:—

County of Cork.

Cantred of Olethan, ...	£5	10	0
Of Kerry in ditto, ...	1	13	8
Of Muscridon, ...	4	10	0
Of Muskry, ...	3	0	0
Of Kynalleth, ...	3	3	4
County of Kerry, ...	5	0	0
County of Limerick, ...	46	0	0
Temporalities of the Bishop of Cork,	13	19	0
Of Kynalbeg, ...	3	4	3
Of Kynaletherthyz, ...	4	10	10
Of Botevant, ...	0	13	4
Of Fermoy, ...	3	3	4
Of others, ...	10	0	0
County of Waterford, ...	25	0	0
County of Tipperary, ...	60	0	0
Mills of the castle of Dublin, ...	9	0	0

The roll is injured and partially defaced, but the whole tot is £200. It is not easy to account for the mills of the castle of Dublin being included in this account, unless those individuals were also receivers for them.

In consequence of the passing of the English act of the

23d Edward III. "*De Servientibus et Operariis*," an act passed in the Irish parliament, of which, as it is a curious specimen of legislation, and gives much information on the manners of those times, and proves the instant adoption of every general law enacted in England, a translation is here given at length; the original French will be found in the appendix.

"Item, it is agreed and assented to, that all the statutes of artificers, labourers, servants, and victuallers, made in the time of the noble progenitors of our lord, the now king, in England, shall be kept and held in the said land of Ireland, and duly executed in all points. And also, forasmuch as the wages of artificers, labourers, and servants, have not been fixed and settled hitherto, it is ordained and established, that bailiffs for husbandry, who know how to work with ploughs and harrows, shall have per annum 12s.—and the bailiffs who do not know those things 10s.—the master hynd, 7s.—carman, 6s.—driver of the plough, 6s.—barker,* 4s.—swine-herd, 4s.—female labourer able to make bread, beer, and malt, 6s.—other female labourer, 4s.—seef,† 4s.—granger, 6s.—horse-boys, 4s.—a cook able in his art, 10s.—butler, 10s.—cook's assistants, 11d.—master mason in free-stone, and master carpenter of free work, able to be masters of their art, for the whole day, 2d.—and others of the said arts, for the whole day, 1½d.—master coverers of slate, 2d.—master plaisterers of walls, 2d.—workers of walls, or other able labourers to serve the artificers aforesaid by the day, 1d.—threshers of corn of each manner, where the lord or master

* Of oaks. † Every needle-women.

shall have twenty bushels, the thresher shall have one bushel, without regard or courtesy, or else by contract or agreement. And each of the artificers and labourers above said, shall take the wages aforesaid, from the feast of St. Patrick until the feast of St. Michael, and from the feast of St. Michael to the feast of St. Patrick, each, in his degree, a halfpenny less per day, and that only for entire working days, but nothing for feast days, and for half a day, half salary, without regard or courtesy for gain or loss. Breakers of stone, 2d. per day, and without meat and drink, 8d.—mowers of corn in harvest, 1d. a day; and in countries where the said artificers and labourers have not hitherto had settled wages, they shall be content therewith. And if any labourer or artificer, shall take ought beyond the wages ordained by this statute, they shall pay to the king treble the amount of wages which they take; and he that sues those who take excessive wages for our lord the king, shall have half the penalty of the king's gift; and the lord of a royal franchise, having the punishment of such labourers and artificers within their franchise, shall take the same as the king takes without the franchise, and he who sues for the lord, shall have the moiety by the gift of the lord. And also it is agreed, that all the acts done by justices to labourers in the said land be final, and that there be no appeal therefrom."

In the 33d year of king Edward III. on Monday next before the feast of St. Ambrose, (7th December, 1359,) it was determined that a great council should be held on the 18th March following, and John de St. Paul, archbishop of Dublin, and the bishops of Meath, Kildare, and Fernes,

the abbots of the blessed Mary and St. Thomas, of Dublin, Maurice, earl of Kildare, John Hussee, knt., John de Cusack, knt., and John de Carew, knt., were summoned under a penalty of £200. and a mandate issued to the mayor of Dublin, to elect two discreet citizens, and the mayor of Drogheda, two discreet burgesses, to be *at Dublin*, at a grand council, "super arduis negotiis cum prelatis, magnatibus, et proceribus consilia habere, proponere, &c."

The archbishop of Cashel, the bishops of Lismore, Killaloe, Limerick, Emly, and Cloyne, Gerald, son of Maurice Fitz-Thomas, late earl of Desmond, David de Rupe, knt., John de Rochford, knt., Richard de Burgo, knt., John Fitz-Nicholas de Kerry, and Richard Mlys Owen de Limerick, were summoned to be *at Waterford*, on the Monday after the feast of St. Ambrose, on the same business, and under the same penalty. The mayors of Cork, Limerick, and Waterford, were commanded to elect two discreet citizens, and the sovereigns and bailiffs of Kilkenny and Ross, and the provosts and bailiffs of Clonmell and Wexford, two discreet burgesses, to meet the said magnates on the same business *at Waterford.* A writ was also directed to the sheriff of Kilkenny, to cause to attend at Waterford, David Nash and Richard Penkiston, *vel alios proceres*, and the seneschal of the liberty of Kilkenny, was commanded to cause to attend David de Rochford, and Thomas Shulham, *vel alios proceres, at Waterford.*

Similar writs were directed to the sheriffs of the counties of Dublin, Louth, Kildare, Catherlagh, the crosses of

Meath, Kilkenny, and Wexford, who were each commanded to cause to attend two *proceres at Dublin.*

The sheriffs of the county cross of Tipperary, the seneschal of Tipperary, and the sheriffs of Waterford, Limerick, and Cork, were directed each to cause two *proceres* to attend *at Waterford.*

Here we have the extraordinary circumstance of two councils, one consisting only of the prelates, magnates, and proceres *of Leinster*, held in Dublin, on Monday the 7th of December 1359, the other of the prelates, magnates, and proceres *of Munster*, held *at Waterford*, on the Monday following; to which the representatives of the cities and towns of those provinces respectively sent their representatives. The sheriffs of Kildare, and the seneschal of Kilkenny, were directed to cause two named individuals, or two other *proceres*, to attend at Waterford, and the other counties of Leinster, to send two *proceres* to Dublin, and those of Munster to Waterford. These councils were very similar to those held at Northampton and York, in the year 1283.

On the same roll, (m. 42) is a writ tested 20th April, to the mayor and seneschal of the town of Drogheda, and Adam Gernon and Henry Hayward, burgesses, who had been elected to attend the last council at Dublin, commanding them, with four other of the most honest burgesses, to attend in their proper person, before John, archbishop of Dublin, and others of the council, to do what they should be enjoined.

On the same roll (facie, m. 72,) is a writ, tested 28th July, to John, archbishop of Dublin, calling him to the king's council, to be held at Dublin, on the Monday after the feast of St. Peter, *ad vincula*, on account *of urgent business concerning the peace of Ireland, and particularly the parts of Leinster*, to which the bishops of Meath and Kildare, the abbots of the blessed Mary, and St. Thomas, of Dublin, the prior of Conall, James de Watenhull, chancellor of Trim, William Loundres, Maurice, earl of Kildare, Sir John Cusack, knt., Sir John Hussee, knt., John Wogan, Robert de Preston, and Oliver Fitz-Eustace, were also summoned.

The mayor and bailiffs of Dublin, with four of the most honest citizens, were also summoned to attend. The sheriffs of the counties of Dublin, Kildare, Louth, and the liberty of Meath, were also summoned to attend with six of the most *(probioribus militibus)* honest knights of their counties and the liberty.

On the 5th of March, 1361, the parliament of Ireland represented to the king, by petition, that many Irish enemies had been promoted to ecclesiastical, as well as lay offices and preferments; the king issued a mandate to deprive such persons, but specially excepted all faithful Irishmen living in the king's peace, who were to be treated as Englishmen.*

On the same day a writ issued, transmitting to the justiciary, chancellor, and treasurer, certain regulations for

* Rot. Claus. 35 Edward III. T. L.

the administration of the revenue, and the offices of sheriff and escheator, which were directed to be proclaimed in all parts of Ireland, viz :—

" That sheriffs should be elected of the most worthy in every county, and that at least twelve of the most respectable individuals thereof, should be responsible for the due execution of the duties, and the king's revenue.

" That the king's revenue having sustained injury by the misconduct of the escheator, the office of escheator should in future be executed by the sheriffs.

" That no leases of lands, or other property in the king's hands, by reason of debts or otherwise, should be made without the consent of the treasurer.

" That seneschals, and other officers of the king's demesnes, should be appointed by the chancellor, treasurer, and the king's council, and insufficient officers be removed by the same authority.

" That receivers of the king's revenues pretend they were not to receive pence and fractional parts, that they be directed to receive and account for them in the Exchequer.

" That seneschals of liberties within every county, be bound to avow their account to the sheriffs."

On the 13th Feb. 1364, a change took place of all the barons, and principal officers of the Exchequer, and the chief and second justice, and the keeper of the rolls, in the Common Pleas.

By a requisition of the magnates and commons of Ireland, an inquisition was held, and the jury found that all men having corn and other necessaries on hand, could

without injury to themselves, sell them at the following rates :—

	s.	*d.*
A crannock* of wheat, ...	8	0
——————— oats, ...	4	0
——————— barley, ...	5	4
——————— wheat meal, ...	9	4
——————— oatmeal,.....	5	0
——————— beans, ...	6	0
——————— peas, ...	6	4
——————— salt, ...	6	0
——————— charcoal, ...	2	8
A stone of iron, ...	0	10

And in consequence a proclamation issued to the sheriffs of Meath, Louth, and Dublin, prohibiting the sale of any of those articles at a higher price under pain of forfeiture, dated the 8th of April, 1364.

It appears by the Close Roll, (1 Ric. II.) that a parliament was held at *Kilkenny*, *die Jovis in crastino cinerum*, 40 Edward III. when the officers of the exchequer petitioned Lionel, duke of Clarence, the lord lieutenant, that the exchequer should be removed from Carlow, where it was in danger from Irish enemies and rebels, to Dublin. It was ordained by the prelates, peers, and commons of Ireland, that it was a place unfit for the custody of the exchequer, and that the allowances to the judges and officers were totally inadequate to their support, praying an addition; the king agreed to allow above their ancient fee :—

* A crannock was sixteen bushels or two quarters.

To the chancellor of the Exchequer, ... 5 marks.
—— chief baron, ... 20 pounds.
—— second baron, ... 10 marks.
—— third baron, ... 10 marks.
—— chief chamberlain, ... 10 pounds.
—— second chamberlain,..... 10 marks.
—— chief ingrosser, ... 10 pounds.
—— second ingrosser, ... 5 marks.
—— clerk of the Treasury, writing the rolls and tallies, ... 5 marks.
—— king's attorney, ...100s.
—— chief remembrancer, ... 50s.
—— second remembrancer, ... 50s.
—— the summonister,..... 4 marks.
—— chaplain for saying divine service in the chapel of the exchequer, 50s.
—— marshall and door-keeper, ... 5 marks.

On the 20th Feb. 1367, it was represented to the king, by the prelates, magnates, and people, that many persons had been excessively and unduly amerced by, and great abuses had taken place in the office of clerk of the market, who made journies through the country, and charged exorbitant fees even where they did not examine the weights and measures. The king directed that no fees should be charged or enforced, but those payable in England, and which should be moderate.

It was also represented to the king, and his great council, by the prelates, earls, and barons, and the commons of Ireland, that the Irish, and other enemies and rebels, rode over the country in hostile array, commit-

ting homicides, robbery, arson, pillaging, and despoiling the monasteries, churches, castles, towns, and fortresses, without reverence of God, or holy church, to the great shame and disherison of the king, by which the said land was likely to be totally lost, unless an immediate remedy was supplied. Upon which the king, feeling acutely the distress and suffering of his people of Ireland, directed a general parliament to be summoned, to meet at Dublin, on Monday, before the feast of the invention of the Holy Cross, (3 May,) last past, when the matter being duly, and at length, debated, it appeared to the parliament, that the evil could not be redressed, or the land saved, unless the earls, nobles, and others of England, who had lands in Ireland, either in person, or by individuals equally influential to represent them, with array of war, came to Ireland to recover their possessions, drive out the enemy, and secure the state of the king and the rights of his crown, without further delay. That, at the first conquest of Ireland, divers noble possessions, lands, seignories, and inheritances, were granted to many noble persons and others in the realm of Ireland, *on condition of their constant residence there with their family and establishments,* to support and defend the said conquest against all impugners thereof, which they were bound to do by their faith and allegiance. But that the said lieges, for the most part, dwelt in England and elsewhere, drawing their revenues and rents from Ireland, without defending the same, or improving the country, *contrary to their duty,* by which the whole of those evils were brought on the country. And the parliament having unanimously agreed to this representation, certified the same to the king under the great seal.

"The king having ascertained that since the said representation, these evils had been greatly increased and multiplied, and taking the same into his most serious consideration, by the advice of the peers, dukes, earls, barons, nobles, grandees,* and sages of his council, assembled in his presence, and of *his certain science and royal authority*, accepted and agreed to the advice of the said parliament, and seeing the profound and great necessity of the matter, lest the said land should be lost and destroyed, declared and ordained, that all persons, whatsoever their state or degree, who held or claimed to have any lordships, lands, or other possessions in Ireland, should go and dwell therein, with their families and establishments, and with men at arms and others, according to the extent of their estates, without any excuse or delay."

"And if there be any great necessity, or other urgent cause, to prevent any such person going, it shall be debated before the king and council, and if allowed to be absent, he shall send some one in his place with sufficient force, according to his estate; and if any person whatever neglects to attend with a proper force, he shall forfeit and be disinherited of all his lands, seignories, possessions, and inheritance, within the said land of Ireland, whatever be his state, degree, or rank, which shall be at the free disposal of the king, and as he shall think best for the defence of the said land, notwithstanding any claim or contradiction in time to come." †

This is a most minute and particular statement of the

* Graunts. † Claus, 42 Edward III. m. 4, d. T. L.

manner of enacting laws at this period, and is, therefore, of great value; all the stages are pointed out and marked with accuracy. The prelates and magnates of Ireland make a representation to the king, who then directs the parliament of Ireland to assemble, and advise as to the remedy necessary to rectify the evil; they certify it to the king, who assembles his English council, consults with them thereon, and then enacts the law. No proceeding could be more solemn, or better suited to the emergency. The system of absenteeism seems ever to have been the bane of Ireland.

The mayor and citizens of Dublin petitioned the king against William de Wyndesore, the lord lieutenant, alledging that he, by the king's writ, had summoned twelve citizens of Dublin to Kilkenny, and compelled them to remain there until they paid him two hundred marks—had also summoned Edmond Berle, and seven other citizens of Dublin to Limerick, and kept them in that city until he had extorted from them a large sum of money—in the parliament held at Baldoyle, he had imposed on the city a talliage of two hundred marks, with many other fines and intolerable impositions. A like complaint was made by the mayor and burgesses of Drogheda, whereupon the king, by his writ, commanded the lord lieutenant to return the money thus unjustly extorted.* A writ was also issued to the barons of the Exchequer directing that the citizens should be discharged from the payment of said sums, and another writ reprimanded Wyndesore for these acts.

* Rot. Claus. 45 Edward III. T. L.

These complaints against Wyndesore, being followed by others from the communities of the counties of Dublin, Meath, Louth, and Kildare, he was recalled, and Robert de Assheton, the chancellor, and Sir Robert Preston, the chief justice of the court of common pleas, were directed to inquire into the charges preferred against him, who accordingly held inquisitions thereon, the findings of which were transmitted to the king, and are now in the Tower of London, the substance whereof is as follows:—

1373.—"On Friday after the feast of the Ascension in this year, the commissioners summoned a jury at Drogheda, who after examining witnesses, found that the said Wyndesore had, with the advice of Thomas, archbishop of Dublin, James de Pykeryn, and Edmond Laurence, in the 43d year of the king, imposed a tax on the commons of Meath, of 6s. 8d. on each carucate of land in that country against their will, and levied the same by extortion. That at Tamelyn he imposed a talliage on the commons of Meath, of a crannock of wheat and a crannock of oats on each carucate of land, levied the same for the use of the said lieutenant, and carried it to Naas, except the collections from the baronies of Morgalyn and Slane, which were carried to Drogheda, receiving for each crannock of wheat 5s. 4d. and of oats 3s. 4d.; a crannock of wheat being then worth in Meath more than 8s. and of oats 5s. all which was appropriated to the use of the said lieutenant, against the will of the faithful people, and that there were then 520 carucates of arable land in culture in Meath.

"The jurors farther say, that John Hoke, who was ap-

pointed to receive the corn at Naas, measured it by an excessive measure, by which the crannock of wheat of Meath, measured by just measure, was deficient a bushel, and of oats two bushels. They also say, that at the parliament held at Dublin before the said lieutenant, on the morrow of the close of Easter, 44 Edward II. *James de la Hyde* and *John Fitz-John of Delvin*, were elected knights for the commons of Meath aforesaid, who were instructed, before their going to the said parliament, on no account to agree to the grant of a subsidy, because of the great impoverishing of the country by the incursions of the Irish. But when they came to Dublin, and saw that Roger Gernon and Richard ———, knights, elected by the county of Louth, had been imprisoned by the said lieutenant, because, in the name of the county of Louth, in the said parliament, they refused to grant any subsidy; fearing that the lieutenant would imprison them also, they agreed to grant, in the name of the said commons of Meath, to the aforesaid lieutenant, a mark out of each of the 520 carucates of land in the said county of Meath, which money the said lieutenant levied by extortion.

" Item—They say that at the parliament at Kilkenny, before the said lieutenant, on the morrow of the Epiphany, 44 Edward III. Simon Cusack, and John ———, were elected by the commons of Meath as their knights, who faithfully agreed and promised not to grant any subsidy, or talliage, and, for two or three days, refused a subsidy for the said county; but, afterwards consented to grant, for the said county, 6d. to be levied out of every pound of the goods of the said county, and it was

afterwards levied against the will of the commons of said county.

" Item—They say that George Telyng, who being indicted and convicted of divers felonies, and delivered, as a clergyman, to the bishop of Meath, was allowed to fine to the king 100 marks for a pardon, by James de Pykering, the chief justice, who also received 500 marks, as a bribe, for his so avoiding justice.

" Item—They say, that at the parliament at Balydoill, held on the octaves of the Holy Trinity, in the 45th Edward III. there was not in the place any building, but a small chapel, wherein the parliament was held, with the intention that, as the commons of Ireland, who ought to be called to the said parliament, could not find lodging or other necessary accommodation there during their stay, they might the more quickly grant the subsidy required of the prelates, magnates, and commons, for the support of the king's war; and, although the said commons excused themselves for two or three days from granting a subsidy, yet, being worn out by the tedious stay in that inconvenient place, they granted to the king £2000.—£500. of which was to be levied in the county of Meath, but the commons being unable to support the heavy burden, sent Stephen Bray, as their messenger, to complain to the king and council in England.

" Item—That at the parliament at Kilkenny, in the 45th year of the king, certain letters were by coercion signed by the prelates, magnates, and commons, stating that they had of their free will granted a subsidy, and

John Prout, member for Meath, was compelled to sign it against his will.

"Item—They say that said James Pykering, chief justice, received a bribe, in the 44th year of the king, of 10 marks at Trim, from John Drake, to excuse him from being made a knight against his will, and 10 marks from John Justice, for a respite from being hanged.

Item—They say that John Northampton, deputy to Henry Coventry, marshal of Ireland, on Wednesday after the feast of St. George, in the 44th of the king, took from Sir John Hussey, who had been committed to his custody, ten marks for mitigation of the severity of the prison, and from Adam de la Mare, twenty cows for the same; and divers other sums and gifts from other persons, by extortion."

Other inquisitions were held, by which it was found that William de Wyndesore, lord lieutenant of Ireland, held a parliament at Dublin, on Monday next, after the feast of St. Peter *ad vincula*, 43 Edward III. (1 Aug.) 1369, Walter Mylys, having been selected to represent Drogheda in Louth: the said lieutenant, by the advice of Thomas, archbishop of Dublin, Stephen, bishop of Meath, then lord treasurer, and Sir James de Pykeryn, knight, imposed certain new customs on merchandise exported from Drogheda, to the parts of Ireland, as well as to foreign parts, against the will of the said Walter, who was elected by the mayor and commons of the aforesaid town, as well as of the commons and merchants thereof, from the 8th of August following to the feast of

the Purification, in the 45th year of Edward III. 1371, which were levied accordingly by Roger Leonys, customer, and John White, comptroller.

That the said William de Wyndesore, held another parliament on Monday after the feast of Easter, 1370, (44 Edward III.) when John Fulpot and Walter Mylys, were elected to represent Drogheda in Louth, in the said parliament, who refusing to grant a subsidy, the lord lieutenant by a writ, in the king's name, commanded the mayor and bailiffs of the said town, and the seneschals and bailiffs of Drogheda, in Meath, in their proper persons, with twelve of the most honest men of the said town, to appear before the said lieutenant on Monday after the feast of the Ascension, who thereupon attended, and were not suffered to depart, until they had granted him £40; and that they paid to James Pykeryn, one of the privy council of the lord lieutenant, 40s. for his good services with the said lieutenant, which sum of 40s. was paid to Simon Charwelten and Roger Leonys, who were appointed by the lord lieutenant to receive it.

On the great roll of the Pipe of Ireland of this year, is an account of the new customs granted by the parliament held before William de Wyndesore, lord lieutenant of Ireland, by the prelates, magnates, and commons of Ireland, for the salvation of the said land, on the following articles: herrings, and other sea fish, great and small, salmon, wine, beef, pork, all kinds of bran, beans, pease, barley, hastimel, salt, skins of horses and oxen, pilefelts, cloth, both linen and woollen, and all other merchandise, by Roger de Leases, collector in the city of Dublin, Dro-

gheda, and the adjoining counties of Louth, Meath, Kildare, and Waterford, &c. from the 8th August, 43 Ed. III. to the 21st Jan. following, viz:—

Dublin city, ...	£40	9	7½
Drogheda, ...	11	7	0¾
Carlingford, ...	8	0	0
Waterford, ...	16	3	9

From the 21st Jan. 43 Edw. III. to 20th May following:

Dublin, ...	18	18	6
Drogheda, ...	7	8	4
Carlingford, ...	11	1	2½

1372.—Writs for a *magnum concilium*, are on the close roll of this year, to the following effect:—" Rex venerabili in Christo patri Thomæ, eadem gratia archiepiscopo Dublinii, salutem. Quia quibusdam certis de causis, salvationem et defensionem terræ nostræ Hiberniæ specialiter concernentibus, *magnum concilium* nostrum, apud civitatem Dublinii tenendum, die Mercurie proximo post festum cathedrâ Sancti Petri, proximo futuro, duximus ordinandum, vobis, in fide et delectione quibus nobis tenemini, firmiter injungendo, mandamus, quod, omni excusatione cessante, aliqui duos procuratores sufficientes pro decano et capitulo ecclesiæ vestræ cathedralis, dictis die et locis nobiscum personaliter intersitis, ad tractandum et concordandum super hiis que circa utilitatem et tranquillitatem fidelium legiorum nostrorum, deodanti ibidem contigerit ordinare. Et hoc nullatenus omittatis nec in aliquo peccetis contra hoc breve. Teste, apud Dubliniam, xiii. die Februarii."

Similar writs were directed to the archbishop of Armagh,

the bishops of Meath, Kildare, Conor, &c. and the abbot of St. Thomas the martyr, Dublin, and William Tany, prior of the hospital of St. John, but omitting the clause of the proxies.

Writs of similar import were directed to the earls of Kildare and Ormond, with an additional clause respecting certain discords arisen in Leinster.

Writs were also directed to the sheriffs of Dublin, to cause to be elected by common consent, two of the best and most sufficient *men* of the county, who should have "*plenam potestatem pro eadem communitate ad tractandum et concordandum*," &c. and also that *he should summon the following twenty individuals by name*:—

Sir Thomas Talbot, knt.	John Talbot of Moyes,
Nicholas ———,	Richard Rush,
Rich. Cruys of Kilsalghan,	John Tyrrell of Powerstown,
John de la Felde,	Thomas Botiller,
Michael Darcy,	Reginald Blackburn,
Geffrey Bruere,	Richard Cruys,
John Cruys,	Roger Uriel,
Walter Wodelock,	John Wellyng,
Reginald Talbot,	Robert Maylle, and
John Fitz-Rery,	Richard White of Killester,

"*in fide et ligeantia que nobis tenentur*" under penalty of one hundred marks. And further, to make proclamation, that they, and *all other the king's lieges*, should be at liberty to go to Dublin on the same business, and return at their pleasure.

Similar writs were directed to the sheriffs of counties, and the seneschals of liberties following:—

The sheriff of the cross of Meath, and the seneschal of the liberty of the same, to summon the following individuals:

Sir Wm. de Loundres, knt.	John Drake,
Sir Simon Cusack, knt.	Thomas Duffe of Rahode,
Sir Walter Cusack, knt.	John Bellew, jun.
Sir N. Castlemarten, knt.	Richard Stokes,
Sir Thomas Tuit, knt.	John Fitz-Mathew,
John Fitz-John, *baron of Delvin*,*	Nicholas Wythington,
	Richard Rede,
Sir Thomas Brown, knt.	John Petyt,
Sir John Barneval, knt.	John Delamer,
Sir Thomas Vernaill, knt.	Richard Readilsall,
John de Troy, clerk,	John Haughton,
John Fitz-Richer,	John Feipo,
Richard Dardyz,	John Cusack,
William Golding,	Walter Dexcester,
Mieler Petit,	Laurence Petit,
Simon Cruys,	Richard Dexcester,
Henry Betagh of Moynalty,	John Corbally,
George Telyng,	John Rodypak.

The sheriff of Louth was directed to summon

Rich. Taaffe of Balybragan,	Robert Gernon of Rathbrist,
John Clynton,	Geffrey White, and ten
John Haddesor,	others.

The sheriff of Kildare,

Sir Robert Calf, knt.	William Wellesley,
Oliver Fitz-Eustace,	John Fitz-Eustace,

* This John Fitz-John, was one of the knights of the shire for Meath, in the parliament held in Dublin, 44 Edward III.

John Rochford, Bartholomew Etely,
John Cress, The abbot of Baltinglass,
Henry Kent, Henry de la Bere.

The mayor, seneschal, and bailiffs of the town of Drogheda,
Richard Mole, William Symkok,
William Roth, John Ashewell,
Nicholas Fitz-Hugh, Thomas Ashe.

The mayor and bailiffs of the city of Dublin, were directed to summon the twenty-four jurats of the city, and also to elect two of the best and most sufficient citizens.

On the same roll, m. 138, is a writ to the sheriff of Louth, to cause to go to Drogheda, *all* the best and most sufficient men of his bailiwick, and also from each cantred, or hundreds of the same, *ad tractandum*, &c.

Notwithstanding the charges and proceedings against William de Wyndesore, some of which were evidently groundless, he was again sent over to Ireland, as lord lieutenant, and by writs, tested by the king at Westminster, 4 March, 1374, directed to the mayors and bailiffs of Dublin and Drogheda, and the sheriffs of Dublin, Meath, Louth, and Kildare, and the seneschals of Drogheda, the subsidies, granted at the parliaments of Dublin and Baldoyle, were directed to be collected, and power was given to the lord lieutenant to enforce payment.

1374.—On the close roll of Ireland of this year, is a writ to the archbishop of Dublin, to the following effect:—

"Quia certis de causis nos et statum terræ nostræ Hiberniæ, concernentibus quoddam *magnum concilium*, apud Dubliniam, die Sabbati in Vigiliis S. Trinitatis, &c."

Writs were also directed to the archbishop of Armagh, and the bishops of Meath, Kildare, and Leighlin; to the abbots of Mellifont, St. Thomas the martyr, and the Blessed Mary, of Dublin, the prior of Louth, the prior of the church of the Holy Trinity Dublin, Master Walter Crump, archdeacon of Meath, the prior of Conall, and to the following laymen :—

Maurice Fitz-Thomas, earl of Kildare,	William Wellesley,
	Walter L'Enfaunt,
William de Loundres, knt.	Adam de Lyt,
Patrick de la Freigne, knt,	Thomas Cruys,
Simon de Cusack, knt.	William Boltham,
Robert de Preston, knt.	John Cref,
Nic. de Carthmarten, knt.	Roger Gernon,
James de la Hyde, knt.	Philip Haddesore,
Thomas Tuyt, knt.	Geffrey White of the Warde,
R. Calf, *baron of Norraght*,	Richard Taff,
J. Hussee, *baron of Galtrim*,	Thomas Talbot, knt.
John Bellew,	Nicholas Howth,
Richard Plunket,	Geffrey Travers,
John Tyrrell,	Michael Darcy.
Oliver Fitz-Eustace,	

Writs were also directed to the sheriffs of Dublin, Louth, Kildare, and Carlow, and the county cross of Meath, and also the seneschal of the liberty, to direct them to cause to be elected two sufficient men for each, and also to the mayor and bailiffs of Dublin and Drogheda, and the pro-

vost and bailiffs of Dundalk, to elect two citizens for the former, and two burgesses for each of the two other towns. This was a council for Leinster only, no one being summoned out of that province.

The foregoing are all the writs of summons to the *magna concilia* on the Irish Close Rolls, and they exhibit a distinct character in those councils from the parliaments, or general assemblies of the kingdom. In this same year, 48th Edward III. 1374, a parliament was held at Dublin, to which were summoned the archbishops of Armagh, Dublin, Cashel, and Tuam, and the bishops of Kildare, Leighlin, Ferns, Ossory, Lismore and Waterford, Cork, Limerick, Emly, Ardfert, Killaloe and Down, the vicar-general of Meath and Cloyne, and the keeper of the spiritualities of Ross, eleven abbots, and five priors; the earls of Ormond, Kildare, and Desmond, and thirty-nine barons; the sheriffs of Dublin, Kildare, Louth, Waterford, Cork, and Limerick; the seneschals and sheriffs of the crosses of Ulster, Meath, Wexford, Tipperary, and Kerry; the mayors, &c. of Dublin, Waterford, Cork, Limerick, Drogheda, and the sovereigns of Youghal, Kinsale, Ross, and Wexford, were directed to cause representatives to be elected for their respective bailiwicks. Among the barons summoned to this parliament, will be found many of those summoned by the sheriffs to the *magnum concilium*.

1375.—A parliament was held at Kilkenny, on the Tuesday after the octaves of St. Michael, at which Sir Nicholas Dagworth produced certain letters patent from the king, tested at Westminster by the king himself, 10th June,

49 Edward III. which were read in the parliament, addressed "*to all archbishops, bishops, abbots, priors, earls, barons, knights, citizens, and burgesses, and all the community of Ireland;*" reciting, that great expenses had been incurred by the king in the defence of Ireland, without any profit in return, and that the council of England had determined to have the matter laid before the parliament of Ireland, and sent Sir Nicholas Dagworth for the purpose, that every man, according to his ability, should bear his reasonable share of the burdens, but it does not appear to have produced any good result.

The king, by a general writ, tested at Westminster, the 6th of August, notified that he had not authorised James le Botiller, the lord justiciary, in his general commission to pardon treasons, felonies, and other offences, to include prelates and earls, who had committed crimes, by which they were liable to loss of life or limb, but had reserved to himself, the trial, judgment, and punishment of prelates and earls, who were not, therefore, to be brought before the lord lieutenant for such offences.

By an entry on the Patent Roll of the chancery of Ireland, of the 51st Edward III. it appears that Sir Walter L'Enfaunt, knt. had been summoned to the parliament lately held in Dublin, as a *tenant by barony*, and not having attended was heavily fined. He pleaded that he was *not a* tenant by barony, and, therefore, ought not to have been fined for non-attendance on the parliament, which having been inquired into, and he not being found a tenant by barony, was quit of the penalty.

" *Waltero L'Enfaunt, milite de exonerando.*

" Rex thesaurario et baronibus de Scaccario suo Hiberniæ salutem. Supplicavit nos, per petitionem suam, justiciario et aliis de consilio nostro in terra nostra de Hiberniâ exhibitam, dilectus et fidelis noster Walterus L'Enfaunt, miles, ut cum ipse, tanquam tenens per baroniam, pro eo quod non venit ad parliamentum nostrum apud Dubliniam ultimo tentum, prout per breve nostrum summonitus fuit, graviter amerciatus extititerit, ubi ipse tenens per baroniam nunquam extitit, prout per quandam inquisitionem inde ad prosecutionem ipsius Walteri super premissis, coram prefato justiciario nostro captam est compertum, sibi amerciamentum predictum pardonare de gratia nostra dignaremus. Et quia per prefatum justiciarium nostrum recordatum et testificatum existit, quod per inquisitionem predictam, ad petitionem ipsius Walteri, ut predicitur captam est, compertum ipsum Walterum per baroniam nullatenus tenere, et non est juris seu consuetudinis in dicta terra nostra hactenus usitate quod aliqui, qui per baroniam non tenuerunt, ad parliamenta nostra summoneri, seu occasione absentie sue, ab eisdem amerciari deberent; de gratia nostra speciali pardonamus eodem Waltero amerciamentum predictum. Et ideo vobis mandamus quod demanda quæ erga ipsum Walterum, ratione amerciamenti predicti, per summonitiones scaccarii predicti, indies fieri facias omnino supersedere, et ipsum inde erga nos totaliter exonerare et acquietum esse facias. Teste, &c. apud Cork xii. die Junii. Per petitionem de consilio."

L'Enfaunt was summoned to parliament, and neglecting to attend, was fined, but as he did not *owe the service of*

giving counsel by the tenure by which he held his lands, and was not one of the suitors in the king's court, the amerciament and fine were remitted, "*because it was not the* law or custom of Ireland *hitherto in use*, to summon to parliament, or for such neglect, to *fine* any one who was not by his tenure *bound to attend*." Had L'Enfaunt, however, attended, and taken his seat, although *not a baron*, he would have become a lord of parliament, and a *peer* of the realm.

It would, therefore, appear from this interesting and curious document, that the crown, (after the final settlement of the parliament into lords spiritual and temporal, and knights, citizens, and burgesses,) considered itself entitled to the service in parliament of those whose ancestors were bound by their tenures to attend the *aula regis* of the early Norman monarchs, and amerced them if they neglected to attend. But it is clear from this document, that a person not a tenant by barony in the 40th year of the reign of Edward III. might refuse to attend the king's summons to parliament, and *to become a peer*.

On the Great Roll of the Pipe of the 14th Hen. VI. in the account of the liberty of Ulster, from 3 Edward III. to the 14th Henry VI. are the following entries of fines—

"Hugo Byssett, 100s. quia non venit ad parliamentum anno regni regis Edwardi tertii, 50 tent.

"Henricus Savage, miles, 100s. pro eodem.

"Senescallus libertatis Ultoniæ quia non retornavit breve dicto parliamento.

"Johannes prior domus Sancti Patricii de Down, 4 lib."

The public transactions of Ireland, in the reign of Edward the Third, supply much valuable information, respecting the nature of early parliaments. The ordinances issued during this reign, exhibit in the strongest and most palpable manner, the valuable nature of those documents which exist on the rolls in the Tower of London, and have not been printed in the early volumes of the *Fœdera*, and the loss of materials the historian has to deplore on that account.

Drogheda sent to the parliament, on one occasion, *one* representative, on another *two*, on another *three*, *or four*; the inference to be drawn from this circumstance is, what has often been alluded to, that to obtain their *consent* to taxation, was the king's great object in calling the representatives of the commons together; he was particularly anxious they should possess *sufficient power to grant;* and it was not at all important, whether one or more were called, as long as they were empowered to act for the whole of the community they represented. It also appears that each representative frequently made a grant specially for his own constituents, different from that made by other members of the commons, and that they did not always join in a grant to affect the whole nation. It is also evident, that at the parliament at Baldoyle, the lords and commons sat all *in one room*, there being but *one small chapel there.* Such a room would accommodate the parliaments of those days, which did not generally exceed one hundred persons, including the lords, commons, and the king's council.

It is also clear, that the chief governors of those days, were very limited in their powers, with respect to legisla-

tion, and that they could not call parliaments, or exercise other high and important royal jurisdiction, without the special authority and instructions of the king in council from England. This is evident, from the tenor of all writs, letters patent, and other official documents, which, moreover, show a jealous anxiety to prevent the lieutenants, or other chief governors, from exceeding their powers, which were too generally too weak and insufficient to enforce respect for their authority; as Sir John Davis observes, the country was never completely subdued into submission to the laws, till the reign of James the First. After the death of Edward the Third, the English power in Ireland gradually wasted away to a shadow of what it had been, and continued to do so till the reign of Henry VII.

CHAPTER XIII.

COUNCILS AND PARLIAMENTS OF IRELAND FROM RICHARD II. TO RICHARD III.

By writs, dated 22d January, 1377, 1 Richard II. a parliament was summoned to meet at Tristledermot, on Monday, *post festum cinerum*. The writs directed to the archbishop of Dublin, and the rest of the bishops, commanded them to appear in their proper persons, and not by proxy, but sufficient proxies were to be sent by the dean and chapter, and the rest of the clergy of the diocese, having full power to treat, agree, and consent to certain articles to be declared to them on the king's behalf. Similar writs were directed to the archbishops of Armagh, Cashel, or *his vicar-general*, the archbishop of Tuam, the bishops of Meath, Kildare, Leighlin, Ossory, Ferns, Lismore and Waterford, Cork, Limerick, Ardfert, Killaloe, Emly, Elphin, Down, Killala, Kilmacduagh, Clonfert, *the custodee of the spiritualities of Ross*, the bishops of Connor, and Cloyne, to the prior of St. John of Jerusalem, the abbots of St. Thomas the martyr and of the blessed Virgin Mary of Dublin, Mellifont, Dunbrody, Albu

Tractu, Baltinglass, Tyntern, and Magio, and to the priors of the Holy Trinity of Dublin and of Connall.

The lay peers summoned were

James le Botiller, earl of Ormond,
Maurice Fitz-Thomas, earl of Kildare,
Gerald Fitz-Thomas, earl of Desmond,
David de Barry, knt.
Richard de Burgo,
Thomas Fitz-John, knt.
Patrick de la Freign, knt.
Simon de Cusack, knt.
William de Londres, knt.
Walter de Cusack, knt.
Hugh Byssett, knt.
Henry Savage, knt.
Thomas Tuyt, knt.
Thomas Vernayll, knt.
Robert Calf, knt.
Thomas Clifford, knt.

Similar writs were directed to the following persons who were of the king's council:—

Sir Robert de Preston, knt.
Stephen Braye,
John Tyrrell,
John Keppok,
Richard Plunket.

Similar writs were directed to the following persons:

Jn°. Hussey, *baron of Galtrim*,
Maurice Fitz-Richard,
Richard oge de Burgo,
John Roche de Fermoy,
Thomas oge Botiller,
Wr°. Bermingham, of Athenry,
Nicholas le Poer,
Jno. Fitz-William de Barry
Geffrey de Laund,
Mathew Fitz-Henry,
Maurice D'Excestre.

Writs were also directed to the sheriffs of the counties of Dublin, Louth, Kildare, Clare, Catherlogh, Waterford, Wexford, Cork, Limerick, and to the seneschals

of the liberties of Meath, Ulster, Kilkenny, Tipperary and Kerry, to cause two knights to be elected for each of their said counties and liberties, and the crosses or church-lands therein.

Writs were also directed to the mayors and bailiffs of the cities of Dublin, Waterford, Cork, and Limerick, to elect and send each two citizens, and to the mayor and bailiffs of the town of Drogheda, and the sovereigns and provosts of the towns of Kilkenny, Ross, Galway, and Athenry, to elect and send each two burgesses.

On the Close Roll of this year, 1 Richard II. is the following entry:—

"Nomina et amerciamenta prelatorum et aliorum qui non veniebant ad parliamentum tentum apud Tristledermot, die lune proxima post festum cinerum, anno presenti, prout per breve domini regis habuerunt in mandatis, videlicet:

Archiepiscopus Tuamensis, ... c. lib.
Episcopus Imolacensis, ... c. marc.
——— Elphinensis, ... c. marc.
——— Alladensis, ... c. marc.
——— Duacensis, ... c. marc.
Custos Episcopatus Rossensis, ... c. marc.
Decanus, capitulus, et clerus Cashelensis,
propter inhabilitatem procuratorum ad comparendum pro iis in eodem parliamento ..... xl. solidos.
Ricardus de Burgo, miles,..... x. marcas.
Simon de Cusak, miles,..... ..... xi. solidos.
Walter de Bermingham, de Athenry, ... c. solidos.
Milerus D'Excestre,..... xi, solidos."

It is not easy to account for the difference in the amount of the fines on these latter individuals, unless it arose from their having attended on some occasions during the session, and departed without permission, but this is mere conjecture; there are not, I believe, any acts or ordinances of this parliament extant.

A parliament was held in the third year of Richard II. in which a statute was enacted, granting to the king two thirds of the profits of all the estates, whether lands, rents, benefices, or offices, and all other possessions whatsoever in Ireland, of all persons who, without the king's license, resided out of Ireland, and compelling those who possessed castles or other fortresses, to have in them a garrison capable of their defence, on pain of forfeiture. Young persons at school, the universities, or the *inns of court*, for instruction only, were excepted from the operation of this law. This act is frequently referred to in the subsequent records, but I have not been able to discover a perfect copy.

Writs are on the Close Roll of the 4th year of Richard the Second, summoning a parliament at Dublin, to meet on Saturday, the morrow of All Souls. They are directed to R——— archbishop of Dublin, to appear in *propria persona*, and direct the dean and chapter to send two proxies, *concordandum, consentiendum, et consilium vestrum impendendum.* Similar writs were directed to the archbishop of Cashel, *or his vicar-general*, the archbishop of Tuam, the custodees of the spiritualities of the archbishop of Armagh, and the bishopric of Meath; the bishops of Kildare, Leighlin, Ossory, Ferns, Lismore and Water-

ford, Cork, Limerick, Cloyne, Clogher, Ardfert, Killaloe, Emly, Elphin, Down, Killala, Kilmacduagh, Clonfert, Ross; the bishops *Cluaensis*,* of Raphoe, Breffny, and Derry; the prior of St. John of Jerusalem, the abbots of St. Thomas, near Dublin, the Blessed Mary, Dublin, Mellifonte, Baltinglass, Dunbrody, Albu Tractu, and Magio, and the prior of Connall.

The lay peers summoned were

James Butler, earl of Ormond,
Gerald Fitz-Maurice, earl of Desmond,
Maurice Fitz-Thomas, earl of Kildare,
William de Loundres, knt.
Thomas Fitz-John, knt.
Patrick de la Freigne, knt.
Robert de la Freigne, knt.
Simon de Cusak, knt.
Walter de Cusak, knt.
Hugh Byssett, knt.
Henry Savage, knt.
Thomas Tuyt, knt.
Thomas Vernayle, knt.
Edmund Hussee, knt.
David de Barry, knt.
Richard de Burgo, knt.

Similar writs were directed to the following persons, who were of the king's council:—

Robert de Preston, knt.
John Keppok,
Stephen Bray,
Richard Plunket,
John Tyrrell.

And to the persons following:

Maurice Fitz-Richard,
John Roche, of Fermoy,
Walter Bermingham, of Athenry,
Philip Fitz-William de Barry,
Nicholas le Poer.

* Perhaps Clounis, in Monaghan.

It is to be observed, that the members of the king's council in these lists are placed after those denominated knights, and before those not distinguished by that dignity, although barons of greater antiquity, which seems to indicate a precedence in consequence of knighthood.

Writs were also directed to the sheriffs of the counties of Dublin, Kildare, Louth, Meath, Catherlagh, Wexford, Waterford, Limerick and Cork, and to the seneschals of the liberties, and sheriffs of the crosses of Meath, Ulster, Tipperary and Kerry, to elect and send two knights, and to the mayors and bailiffs of Dublin, Drogheda, Cork, Waterford, Limerick, and to the sovereigns of Kilkenny, Ross, Wexford, Youghal, and to the provosts of Galway and Athenry, to elect and send each two citizens or burgesses to the parliament.

On the Close Roll of the 5th of Richard II. are enrolled writs of summons, dated 29th April, to a parliament to be held in Dublin, on Monday, after fifteen days of the Holy Trinity. The writ recites, that Edmund de Mortimer, the lord lieutenant, was dead, and that the king, being anxious to provide for the safety of the kingdom, had, by letters patent appointed Roger de Mortimer, earl of March, lord lieutenant, and desired him with all alacrity to hold a great parliament *de prelatis*, *magnatibus*, *proceribus*, *et communitatibus terræ*. The first writ is to R. archbishop of Dublin, with the clause directing proxies for the dean and chapter and clergy of the diocese, having sufficient power, &c. Similar writs were directed to the archbishop of Tuam, the bishops of Kildare, Meath, Leighlin, Ossory, Fernes, Lismore and Waterford, Cork, Cloyne, Li-

merick, Ardfert, Killaloe, Emly, Elphin, Down, Connor, Ross, and to the custodees of the spiritualities of the archbishoprics of Armagh and Cashel; to the prior of St. John of Jerusalem, in Ireland; the abbots of St. Thomas the martyr juxta Dublin, of the Blessed Mary juxta Dublin, Mellifont, Baltinglass, Jerpointe, Albu Tractu, Magio, and the prior of Conall.

The lay peers were

James le Botiller, earl of Ormond,
Maurice Fitz-Thomas, earl of Kildare,
Gerald Fitz-Maurice, earl of Desmond,
Wm. de Loundres, knt.
Thomas Fitz-John, knt.
rick de la Freigne, knt.
Robert de la Freigne, knt.
Simon Cusak, knt.
Walter Cusak, knt.
Thomas de Vernayll, knt.
David de Barry, knt.
Hugh Byssett, knt.
Edmund Hussee,
Richard de Burgo, knt.

Similar writs were directed to those of the king's council, videlicet:—

Robert de Preston, knt.
John Keppok,
Stephen Bray,
Richard Plunket,
John Tyrrell.

And to the persons following:

Maurice Fitz-Richard,
John Roche of Fermoy,
Nicholas le Poer,
W. Bermingham of Athenry,
Philip Fitz-William de Barry.

Writs were directed to the sheriffs of the counties of Dublin, Kildare, Louth, Catherlogh, Wexford, Waterford, Limerick and Cork, and to the seneschals of the liberties

of Kilkenny, Meath, Ulster, Tipperary and Kerry, and the sheriffs of the crosses of the same, to elect and send two knights, and to the mayors and bailiffs of Dublin, Drogheda, Cork, Waterford, Limerick and Kilkenny, and the sovereign and provosts of Ross, Wexford and Youghal, and the provosts and bailiffs of Galway and Athenry, to elect and send each two citizens, or burgesses, to the said parliament.

I have not been able to find any of the statutes or ordinances of this parliament on record, but a document enrolled on the Plea Roll of the 5th of Richard II. referring to this parliament, shows the accuracy and anxious attention to form and precedent which marked its proceedings, viz:—

"Dominus rex mandavit, &c. in hæc verba—Ricardus dei gratia rex, &c. Inspeximus quandam petitionem quam prelati, magnates, et communitas terræ nostræ Hiberniæ, in parliamento nostro apud Dubliniam, die lune proxima post quindenam Sanctæ Trinitatis, proximo preterito, summonito et tento, comparentes fieri et in eodem parliamento ostendi et perlegi fecerunt in hæc verba:—

"The prelates, lords, and commons of the land of Ireland, being summoned by writ, to be at a parliament at Dublin, in fifteen days of Trinity, in the fifth year of the reign of king Richard the Second, at which day and place were assembled the prelates, lords, and commons aforesaid, and were informed that (Roger de Mortimer, earl of March, &c.) the lieutenant of our lord the king was so much indisposed that he could not in his own person

be present to hold the parliament; upon which the assembly declared their opinion, that that meeting could not be properly considered a parliament. That, in all times within memory, from the conquest of the said land, there had been seen no parliament which had not been held in the presence of the chief governor for the time being. And that it might be objected, that to hold parliaments according to the form abovesaid, without the chief governor of the said land being present, in divers and many ways may be to the prejudice of the lieges, and the disherison of the prelates, their successors and their churches, and to the lords, and their heirs, and also to all the commons. They, therefore, made protestation that they were unwilling, nor would accept that as the legal manner of holding parliaments, without the presence of the chief governor of the land, nor should it be made or held as a precedent hereafter. Nevertheless, the said prelates, lords, and commons, out of their reverence to our lord the king, and the lord lieutenant, and that it imports the safety of his estate, and a notable or urgent cause being given for the absence of the lord lieutenant, and for the great necessity, perils, losses, and mischief, in which the said land is placed, agree and consent, that this present assembly shall be held for a parliament, and all things in their affairs, treaties, and agreements, shall be held and established, according to the tenor of the writs thereupon done. Demanding and saving, nevertheless, to them, their successors and heirs, and to the commonalty aforesaid, their franchises, usages, and liberties, and their protestations aforesaid had, and also requiring the same, their protestation should be enrolled, and put on record in the chancery of the king, and that an exemplification

thereof should be made under the great seal, as witness of the aforesaid thing in time to come."*

"Nos autem petitionem et indorsamentum predictum, de avisamento consilii nostri in Hiberniâ, ad requisitionem dictorum prelatorum, magnatum, ... tenore presentium duximus exemplificandum. In cujus rei testimonium has literas nostras fieri fecimus patentes. Teste Rogero, filio et heredi Edmundi de Mortuomari, nuper comitis Marchiæ et Ultoniæ, locum nostrum tenente terræ nostræ Hiberniæ, 23 Junii, a. r. n. 6to."

"It is accorded by the council of our lord the king, that this petition and protestation be enrolled and exemplified according to the purport of the ..... petition, saving always the rights and prerogative of the king in time to come."

This document illustrates a point of constitutional law, as well as the customs and practice of the ancient parliaments; the king previously to the 9th of Henry IV. "was used to be present at all debates in the lords, personally advising with them on the public business."† In this case, the lords and commons of Ireland protest against the holding a parliament without the presence of the king's representative, the lord lieutenant, and declare the same custom to prevail in Ireland, as at all times of which memory is not to the contrary, since the conquest of the said land, there had never been a parliament held without his being present. The parliament con-

* For the original French, see appendix.

† Hallam's Middle Ages, Vol. III. 157.

sidered it of so much consequence, that they require their protest to be enrolled and exemplified in chancery, for which the council endorsed the same with a consent, saving the king's rights and prerogative in time to come.

The statute of the 17th Edward III. is stated to have been passed before the lord justice, the chancellor, the treasurer, and all the others of the king's council. This shows the parliament of Ireland to have felt as keenly anxious in support of their rights and privileges as the parliament of England. They required the protest not only to be enrolled in chancery, but to be exemplified under the great seal, so anxious were they to prevent the effect of an unusual precedent, and so scrupulous was their attention to forms, systematic proceeding, and precedents. This clearly negatives the notion of arbitrary or accidental custom ever prevailing in the Irish parliaments.

A writ directed to the lord lieutenant, the chancellor, and the treasurer of Ireland, of the 17th Richard II. is entered in the Domesday Book of the city of Dublin, in which the king directs the following English statutes to be proclaimed, and observed in Ireland:—14 Edward III. cap. 7—1 Richard II. cap. 8—6 Richard II. cap. 6—13 Richard II. cap. 13. And concludes—"Et hoc vobis et cuilibet vestrum significamus quo singulo articulos predictos statutorum predictorum in terra nostra Hiberniæ, in comitatibus, civitatibus, burgis, et villis mercatoribus, et aliis locis terræ nostræ predictæ, ubi magis expediens fuerit, publice proclamari, et teneri, ac observari. Teste meipso apud Westmonasterum, 2d° die Sep. a. r. n. 17°."

In this case the king legislates for Ireland, notwithstanding the constant, and, as we have seen, the previous holding of parliaments, with the most scrupulous attention to forms; and it would appear from this, that the chief object of holding parliaments was, even at this period, the mere granting of subsidies.

The records of Ireland, supply but little information of the events which took place in Ireland at the deposition and death of Richard.

A parliament was held in Dublin in 1402, of which the only entry I have found on the records, is as follows:— "Dominus rex mandavit breve suum justiciariis suis ad placita coram eo in terra Hiberniæ assignatis, in hæc verba: Henricus dei gratia rex Angliæ, et Franciæ, et dominus Hiberniæ, justiciariis suis ad placita coram nobis in terra nostra Hiberniæ tenenda assignatur, salutem. Quendam articulum in quodam statuto in parliamento nostro apud Dubliniam, ultimo tento, inter cetera contentum edito, vobis mittimus presentibus interclusum, mandantes quod viso articulo predicto illum publice proclamari ac firmiter teneri et observari facias, prout continetur in eodem. Mandavimus omni vicecomiti nostro comitatus Midiæ quod articulum predictum in locis ejusdem comitatus, ubi melius expedire poterit, publice proclamari, ac firmiter teneri et observari faciet, in forma predicta. Teste carissimo filio nostro Thomâ de Lancastro, senescallo Angliæ, locum nostrum tenente terræ nostræ Hiberniæ, apud Dubliniam, xi. die Julii, anno regni nostri tertio. Articulum patet in forma quæ sequitur."

"Item acorde est et defendu que nul desore face null entre en ascounz terres, tenemens, ou autres possessiones quelcounqes, ne lour teignent euz en icelles, a fort mayne oue a multitude de gens eamz, taunte soulement en pesible et easie manere, et si null le face et pleint eut veigne as justices de la pees, oue al viscount del counte, ou a ascun de eaux, ou le viscount preignent ou preigne sufficeaunt poair del counte et voisent en vois a lieu, ou tiel forte soit fact et sils trouent ou troue ascounz que teignent tiel lieu forciblement, apres tiel entre fait, soient prisez et misez en le proscheigne gaole, ayde nier convicte de recorde de mesmes les justices, ou une de eux, ou le viscount, taunque ils eient fact fyn et raunceom au roy, et que toutz gentz de counte soient entendaunz as ditz justices, et a chescoun de eaux, et a viscount pur aller et enforcer mesmes les justices ou viscount pur arrestur tieulx mealfaisours, sous payne de imprisonnement et de faic fyn au roi. Et en cas que nul tiel entre soit fact a force, come de suis est, dit soit tenuz pur null, savaunt au partie autre foitz, bonn entre peiseblement en due forme sil ad droite."*

In 1404, 5 Henry the Fourth, a parliament was held at Dublin, in which the great charter was confirmed, as were the statutes of Kilkenny and Dublin.†

In 1406, a parliament was held in Dublin before Sir Stephen Scroop, which adjourned to Trim, but no record of its proceedings are extant.

In 1408, another parliament was held in Dublin, in

* Plea Roll, B. T. 3 Henry IV. 1402.

† MS. History of Ireland, penes me.

which the charter against purveyors, under the great seal of England, and the statutes of Kilkenny and Dublin, were established.*

In 1410, a parliament was held in Dublin, which passed an act, making the taking of *coyne* and *livery* treason.

On St. Mathias' day, (23 Feb.) a parliament was held in Dublin, and sat for fifteen days, when a talliage was demanded, but not granted. †

James le Botiller, earl of Ormond, lord lieutenant, landed at Waterford on the 4th of the ides of April, 1420, and St. Andrew's day following a parliament was held in Dublin, which granted the lord lieutenant *three hundred marks*, and then adjourned till Monday, after St. Ambrose's day, 1421, when it was determined to send the archbishop of Armagh, and Sir Christopher Preston, knt. to make complaint of misgovernment and other grievances, and to carry over the statement thereof to the king. These were sealed with the great seal of Ireland, by the vice-chancellor, in the absence of Laurence Merbury, the chancellor. This statement of grievances is enrolled on the Close Roll of the 9th of Henry V. in the rolls office of chancery of Ireland, in the French language, of which the following is a translation:—

"To our very excellent and very sovereign liege lord, these are the points and articles which your poor humble lieges of your land of Ireland, the lords spiritual and tem-

* MS. History of Ireland, penes me. † Ibid.

poral, and your commons in your parliament, held lately in your city of Dublin, before your very humble cousin James le Botiller, earl of Ormond, your lieutenant of the said land, who, to make known their most grievous complaints to your very wise and most benign grace, for your gracious remedy, and to declare and lay before your highness their complaints, and articles, which, with the assent of the said lords and commons then assembled, were agreed to: your humble orator and chaplain, John, archbishop of Armagh, primate of Ireland, and your faithful liege Sir Christopher Preston, chivaler, were appointed messengers, to approach your most high and royal majesty, for the aforesaid cause of the articles which follow.

"And first, most sovereign liege lord, they show to your very high and royal majesty, that your said poor lieges are distressed, and your land, for the greater part, wasted and destroyed by the Irish enemies and English rebels, as well by their continual wars on your said lieges in each county of your said land, as by divers extortions, oppressions, non-payments. and evil* *coignes*, by divers lieutenants and their deputies, and the great persons and nations of the same your land, on your said lieges continually done and used, and by default of the due execution of your laws, by the omission of which your said land has descended to so great a decline, that your said land will never be relieved, and your said enemies and rebels chastised, without your most sovereign and gracious presence within your said land, as it appears to your said poor lieges, but the same, your land and your lieges there, in a

* Coign and livery.

short time will be utterly lost and for ever destroyed, which God forbid.

"Item—Your said poor lieges state, that former lieutenants of your said land, and their deputies, although they had of your grant, revenues and profits for their support, committed, nevertheless, divers extortions, oppressions, damages, and grievances, on your said lieges, by force and colour of their power; and, please your royal majesty, expended little or nothing in the wars of your said land, in aid and comfort of your said lieges, and in safeguard of the said land, but kept and retained the said revenues in your most gracious hands. Your lieges, therefore trust, most gracious lord, that your said land will now be relieved, since that the aforesaid revenues still remain in your most gracious hands unexpended, as abovesaid.

"Item—Your said lieges pray, that your money under your coinage may be made, according to your sage and gracious discretion, in your said land, and at your said city, that is to say, the two-pence, penny, halfpenny, and farthing; and likewise, according to your most gracious discretion, in the same manner as it is in your kingdom of England, where all manner of offices and ministers, are, in such case, without excuse for misconduct, to the great profit and relief of your said lieges.

"Item—Your said lieges shew, to your most high and royal majesty, that whereas, at the first coming of your most noble predecessor, king Richard the Second, to the said land, most of the great chieftains of the Irish

nation, that is to say, Macmorogh,* O'Neil, O'Breene of Thomond, O'Conor of Connaught, and divers other Irish, most humbly and of their free will submitted and became liege men to him and his heirs, kings of England, for themselves, their children, kindred, and people for ever, and at that time did their liege homage; and also for greater surety, they bound themselves, of their own free will, by divers instruments, as appear in various forms, to the most holy father the pope, and his successors, for the firmly keeping their allegiance; the which instruments remain in your said treasury of England, as your said lieges suppose; but since that time the said persons openly became outlaws and rebels, and wasted and destroyed your said lieges, against the form aforesaid promised; your said lieges, therefore, pray, if it shall please your most noble and gracious lordship that you will write to and inform our most holy father the pope, by your most gracious letters, the matters and things aforesaid, with their circumstances, that a crusade be made against the said Irish enemies for the relief and salvation of the said land and of your said lieges in that behalf, and in perpetual destruction of the said enemies by the aid of God.

"Item—Most sovereign liege lord, your said lieges grievously complain, that in your parliament held at your said city, in the fifteen days of St. Hilary, in the 4th year of your reign, before Sir John Talbot, of Hallomshire, chivaler, then your lieutenant of your said land, your orator and chaplain, Thomas Crauley, then archbishop of

* Cavanagh.

Dublin, whom God assoil, was chosen messenger, to approach your most high majesty, to declare the state and government of your aforesaid land, and thereupon the message was engrossed and finished by certain scribes, appointed by the authority of the said parliament; and when the message was engrossed, the aforesaid engrossers prayed and required Monsieur Laurence Merbury, your chancellor of your said land, to permit the said message to be sealed with your great seal of your said land, then in his custody, which the said chancellor refused, and denied the great seal, to the great detriment of your said land, as more fully appears by an instrument then made; the which may your most puissant lordship deign to examine; your said lieges also pray that, as your said chancellor is, by your command, with you in England, that you will please to make him appear before you, to declare the cause why he would not affix your seal to the said message, and thereupon to make and ordain a remedy, that such like shall not, most gracious sovereign, occur again.

"Item—Your said lieges inform you, that, being thus loaded with divers intolerable charges and wars from day to day, the landholders, artificers, and labourers, of the said land, are daily leaving the same in great numbers, going to your kingdom of England, by which the husbandry of your said land is greatly injured and disused, and your said lieges rendered incapable to resist the malice of your said enemies, for which reason, may it please your highness, to consider the aforesaid matter, and to ordain a remedy.

" Item—Your said lieges shew to your said highness, that, whereas, shortly after your coronation, Monsieur John de Stanley, whom God assoil, was your lieutenant of your said land, at which time, and in time of our most high lord the king, your father, and of your predecessor king Richard, the said John paid little or nothing of his debts to your said lieges, but committed divers extortions and oppressions from time to time, against the form of your laws, and to the great injury of your said land; for which may it please your most gracious lordship, to compel the heirs of the said John Stanley, who was greatly enriched by the goods of your said land, to come into the said land, and make payment of his debts, and amend the defaults done by him, as shall appear best to your highness.

" Item—Your said lieges shew, that after the death of the said Monsieur John Stanley, the reverend father in God, your faithful liege Thomas, archbishop of Dublin, whom God assoil, was elected by your council aforesaid, to be your justice of your said land, who governed towards your most dread lordship and your said lieges benignly and honestly, making reasonable payment to your said lieges, without any extortions or oppressions upon them, with which governance your said lieges were greatly pleased and well contented, and signify to your said highness that such government as the people of your said land then enjoyed, would be a good example to be followed in time to come.

" Item—Your said lieges complain, that in the time of Monsieur Sir John Talbot, chivaler, being lieutenant of

your said land, there were also committed many great and excessive extortions and oppressions, as well upon religious people and others of holy church, as upon your said lieges, which were done openly, their goods and chattels taken, paying little or nothing for them, by which proceeding your said lieges were very much injured and impoverished; may it, therefore, please your highness to consider the matter, and to command the said Monsieur John, in the manner as shall seem best to your royal majesty, together with his deputies, attorneys, and officers, in your aforesaid land, to make amends for these aforesaid extortions and oppressions and due payment to your said lieges, which would be in great succour and relief of the poor estate of your said lieges.

"Item—Your said lieges shew to your most royal majesty, that in the times of your most noble progenitors and predecessors, that is to say, Edward the Third, and Richard the Second, late kings of England, certain commissioners, and with them faithful, valiant, and able persons, were sent, by their commandment, to your aforesaid land to inquire into the acts of your lieutenants, justices, and guardians, for the time being, and of their government, extortions, oppressions, non-payments, and other damages done to the said lieges, and to inform your said progenitors and predecessors thereof from time to time; at which periods your said land was in a much better state of prosperity than it is now. And most high liege lord, since your coronation, such commissioners, although promised, have not come into the land to inquire as aforesaid. May it, therefore, please your majesty to consider the aforesaid matter, and to send such loyal and faith-

ful persons of your said kingdom into your said land with commission to inquire of the acts of your lieutenants, officers, and of others your ministers of your said land, and of all the ministers and officers of their government, and of their extortions, oppressions, excesses, non-payments, preys, damages, false imprisonments, and all other manner of grievances by them, or any of them, done or perpetrated since your coronation, and to certify them to your highness, and that a proper remedy may be had to your said lieges' great profit and consolation for all times.

"Item—"Your said lieges shew that, whereas, in your parliament held before your present lieutenant, he being requested by your said lieges to observe your laws, and suppress all manner of extortions and oppressions, and to make due payment to your said lieges, your lieutenant declared, that, with the aid of God, he, by all his power, would keep all your said laws, and make due payment of his debts, and if he should not receive of you, most gracious lord, sufficient to pay your said lieges, he promised at the same time in the parliament, before all the estates there, that at the end of his term he would assign the rents of certain of his lands, in his best neighbourhood, without taking any rents from them, until due payment should be made to your said lieges; for which your said lieges greatly thank your said lieutenant, and also, for that your said lieutenant had abolished an evil and very heinous and intolerable custom called *coigne*, which for a long time had been used in your said land, upon your said lieges, to the very great injury of them and their affairs. Your lieutenant has done well hitherto, and promised to

have done more, if he had sufficient support from your most gracious aid; your said lieges pray your most sovereign lordship, if it should be pleasant to you, that you will thank and reward your said lieutenant, and supply him with means at the humble request of your said lieges, and command that the support be permanent.

"Item—Your said lieges shew that, whereas, certain persons, not literate, or acquainted with writing, hold certain offices in your exchequer of your said land, and perform the duties thereof by deputies; and some, as well clerks as others, hold and occupy two or three offices in the same exchequer; and by them great and excessive fees are taken of your said lieges, and other extortions are made, to enable them to pay great rents to their principals, and the said offices are not so duly kept, and the services thereof, so well done, as have been accustomed; therefore, your said lieges pray, that it may please your most high discretion, to consider the aforesaid matter, and ordain a remedy.

"Item—Your said lieges shew that, whereas, they are ruled and governed by the laws used in your kingdom of England, and, for the purpose of their being informed and acquiring a knowledge of the same, your said lieges have sent able persons, of good and gentle birth, (your English lieges born in your said land) to certain inns of court, where they have been received from the time of the conquest of your said land, until lately, that the governors and companies of the said inns, would not receive the said persons into the said inns, as they had been accustomed to do; may it please you, most gracious sovereign lord, to

consider and ordain due remedy, that your laws may continue and not be forgotten in your said land.

"Item—Your said lieges complain that the Castilians, Scotch, and other enemies, from divers parts, for a long time past, have kept the sea between your kingdom of England and your said land, and your faithful lieges and merchants have been robbed, imprisoned, and plundered, and oftentimes slain, to the very great injury and distress of your lieges and merchants. May it please your highness to consider the aforesaid matter, and, that your said land may not be without merchandise and support, of your benign grace you will provide a proper remedy.

"Item—Your said lieges shew that, whereas, by a statute made in England, it was ordained that the escheator of each county, should possess within the county of which he was escheator, sufficient lands, rents, and tenements, to answer for his defaults, as well to the king, as to the party. But, notwithstanding your escheator of your said land dwells in England, as many other escheators before him did, and has made deputies in divers counties within your said land, who have not possessions within the said counties, according to the form of the said statute, and have done and committed great damages and oppressions on your said lieges, by reason of the great annuities they send to their principals,* to the great damage and impoverishment of yourself as well as of your said lieges. May it, therefore, please your said majesty, to consider the aforesaid matter, and to ordain that your present escheator

* Meisters.

of your said land, as well as all other escheators, who shall be in future, shall appoint no deputy in the said land, unless he has sufficient lands and tenements within the said county where he is deputy, as the said statute makes mention.

"Item—Your said lieges shew that, whereas, the most noble king Edward the Third, your great grandfather, late king of England, whom God assoil, (among other pardons and general releases to all his lieges of England, Ireland, and Guienne, and all his other lieges) for the souls of his most revered father and mother and the souls of his most noble progenitors, pardoned and released all manner of debts and accounts due to himself or any of his progenitors, as by his letters patent, enrolled in his exchequer of England and Ireland more fully appears, which most gracious pardon was a very great relief and improvement to the said land. And you, of your most abundant grace soon after your coronation, pardoned all your lieges who should, within a certain time limited, sue to your most gracious lordship, all manner of debts, accounts, and other articles, as appears by your most gracious patents to divers of your lieges made and done; and your said lieges of your said land, for the greater part, not knowing that your said pardon was so generally granted, and also the period to which your said pardon was limited, sued for nothing to the fountain of your very abundant grace. May it, therefore, please your majesty to incline the ears of your abundant pity to your said lieges, considering the poor estate and insupportable charge they sustain, and for the benefit of the souls of your most noble father and mother, and of all your other pro-

genitors and predecessors, whom God assoil, grant the same pardon to your said lieges, as best seems good to your most wise discretion, in perpetual memory of your most powerful and gracious lordship.

"Item—Your aforesaid lieges shew to your most high majesty that, in the parliament of king Richard the Second, held in the third year of his reign, it was ordained that all people, be their estate or condition what it might, who possessed any lands, rents, benefices, or possessions whatsoever within the said land of Ireland, (being then out of the said land) before the feast of the Holy Trinity, or of St. John the baptist, then next coming, and ever afterwards, in aid and defence of the said land, should each bring six faithful lieges, there to dwell and reside, to encounter the rebels and Irish, and to keep and defend the same. And all those who had castles and fortresses in the said land, should have them in a competent repair, and keep and sustain them in good and safe state, for the security of the said castles and fortresses, to prevent the peril of losing the same; and in case any of those who had lands, offices, rents, benefices, or other possessions in the said land, should be absent out of the said land after the said feasts, for reasonable cause, for the time they shall be absent, shall find, have, and place in their room and stead, capable men, for the defence of the said land, as necessity required; having due regard to the quantity and value of the said lands, rents, offices, and other possessions aforesaid; and if they should not, then two parts of the profits of the said lands, rents, offices, and possessions, were to be levied by the justices and

governors of the said land for the time being, and expended and appropriated in the defence of the said land. Provided nevertheless, that, from the third parts of the benefices of all who were absent, dwelling and studying in the university, or without the same land for reasonable cause by license of the king under the great seal of England, there should be allowed common charges and necessaries, according to the certificate of their ordinaries, as in the said ordinance more fully is contained. And further, most puissant lord, divers persons, your faithful lieges of your said land, going abroad, by citation of our most holy father the pope, as well under his seal as at the instance of a party complaining, and other persons to solicit the graces of our most holy father the pope, and others dwelling in England, as well in the schools as universities as to acquire the knowledge of your common law, as apprentices of the courts of law, and divers persons by license under your great seal of Ireland, and other persons without license, who have sufficient people in their places, notwithstanding that the said persons are absentees and dwellers out of the said land, by reason of their study, they have been vexed and grieved by the offices of your exchequer of Ireland; and often the two parts of the issues and profits of their said lands, tenements, offices, and possessions in the same land, are entirely taken, as if they were absentees from the said land without license, to the great injury of your said poor lieges; therefore, they pray your said most gracious lordship, by the advice of your most wise council, to declare and certify to your said lieutenant of Ireland, and your officers, the effect and intent of the said statute, how, and in what manner, your said lieges

should be governed in that matter in time to come, to the great comfort and relief of your said poor lieges.

"Item—Your said lieges shew that, whereas, your poor orator, John Randolf, clerk, parson of the church of our lady of Galtrym, in the diocess of Meath, (who solicits as well for you, our sovereign lord, as for himself) that, whereas, the temporalities of the bishoprick of Meath, of which the advowson of the said church is parcel, were seized into your hands for certain causes; the which church became void by the consecration of John Swayne, clerk, to the archbishoprick of Armagh, by which, the temporalities being into your hands, the said John Randolf was presented to the said church by the right and title of your most gracious lordship, and instituted and inducted into the same, by the ordinary of the same diocess, the aforesaid temporalities being in your hands; notwithstanding which, one Thomas Prys, chaplain, purchased of the *pope** a bill to be parson of the said church, after the said voidance, without making mention of your title; the which Thomas, and divers others confederating with him, have said and declared, at the court of the pope, that you, most gracious lord, had no right to present to any church, when the temporalities were so in your hands, because the said voidance did not occur on account of the death of the bishop of that place; to the disherison of your crown, and the great damage and injury of the said John; therefore, your said lieges pray, that you will ordain a proper remedy, according to your most sage discretion, against the said persons who have

* Apoistall.

made such declaration, in support and salvation of the rights of your crown.

" Item—Your said lieges shew that, whereas, the lieutenants and others whosoever, governors of your said land have, hitherto, had power to receive the homage of your tenants, who hold of you, most sovereign lord, in chief, and now are ready to do their homage, are prevented, because your present lieutenant has no power to receive it; and thus your said tenants must repair over sea, to appear before your highness to do their homage, which would be a very great grievance to your said land, on account of the resistance of your enemies therein. Your said lieges, therefore, pray you to consider the aforesaid matter and to grant, if it please you, to your lieutenant, who now is, and to your governors of the said land who shall be for the time to come, full power to receive the homage of your tenants aforesaid. And, further, to grant to your said lieutenant, full power to present able parsons, and make collation to all manner of dignities, prebends, churches, hospitals, chantries, free chapels, and other benefices of the holy church, whatsoever, with or without cure of souls, of your donation, collation, or presentation in whatever manner appertaining, considering that in the times of such voidances, divine service would be greatly frustrated, and the souls in such churches neither duly kept or governed.

" In testimony of these points and articles as abovesaid, most excellent and most dread sovereign liege lord, your servant and poor chaplain, Hugh Canent, deputy to Monsieur Laurence Merbury, your chancellor,

in your aforesaid land, has placed your great seal of your said land, being now in his keeping, at the request of the said lords and us, your said poor commons, in your said parliament. Done, agreed, and given at your said city, the 28 day of April, in the 9th year of your most gracious reign."

This parliament also granted a subsidy to the king.

The *English Pale,* as that portion of Ireland under the dominion of the king's lieutenant, was called at this period, was much diminished at the commencement of the reign of Henry VI. and the English power was still more crippled during its continuance. His father having been almost totally occupied by continental conquest, paid but little attention to the melancholy representations of the Irish parliaments, and leaving his son a minor, the guardians of the realm had too much, elsewhere, to occupy their attention. Irish affairs were, therefore, almost totally neglected.

The *size* of the Placita rolls of the courts, is not a bad criterion, from which to judge of the extent of the influence of English law and power, at different periods. During the reigns of Henry the Third, Edward the First, Second, and Third, they are large and well written; pleas and assizes were held by the justices itinerant in most parts of Ireland, and the pleadings exhibit an exact sequence and all the regularity of form and precedent. They gradually became ill written and diminished in size as the Irish encroached upon the English power, and limited the extent of its territory, and continued regularly to decrease until the term rolls, from a portly size of from

sixty to ninety membranes, for the proceedings of each, are shrunk to *four*.

There were, however, numerous parliaments held during this reign which, in the number of members, were as diminished as the rolls; many powerful and influential of the nobles residing in the *Irish country*, had adopted their language and manners, and being English rebels or Irish enemies, ceased to attend; the commons were confined to the representatives of the five or six counties of the Pale, and a few cities and towns. Those out of the Pale were often fined for not returning the writs.

1426.—A great council was held in the 5th, and others in the 6th and 8th years of Henry VI. as appears by the account of Sir James Whyte, knt. seneschal to Richard, duke of York, of the liberty of Ulster, from the 6th Oct. 3 Edward III. to the 25th Jan. 14th Henry VI. on the great roll of the Pipe. The following are the entries:—

"Episcopus Dunensis, £40. quia non venit per se, vel per procuratorem, ad concilium domini regis apud villam de Naas, die Sabbati proxima post festum Sancti Clementis Papæ, anno regni nunc quinto tentum et inchoatum, nec retornavit breve domini regis sibi inde directum.

"Episcopus Conorensis £40. quia non venit ut supra.

"Episcopus Dunensis 100s. quia non venit ad magnum concilium domini regis, tentum apud Dublin in crastino animarum anno regni regis Henrici sexto.

"Episcopus Clogherensis 100s. pro eodem.

"Episcopus Conerensis 100s. pro eodem.

"Episcopus Derriensis 100s. pro eodem.

"Episcopus Dunensis 100s. quia non venit ad conci-

lium domini regis die veneris proxima post festum Sancti Nicholai episcopi, anno regni regis nunc 8°, per se nec per procuratorem, nec breve domini regis sibi inde directum returnavit.

" Episcopus Conerensis 100s. pro eodem.

" Seneschallus libertatis Ultoniæ, et vicecomes crocearum ibidem, 100s. pro eodem.

" Superior et prepositus de Galwey, 100s. pro eodem."

The earliest statute roll of Ireland extant, is of the fifth year of this reign, and contains but one act.

1428.—In the 7th year of Henry VI. a parliament was held before Sir John Sutton, lord Dudley, lord lieutenant, the roll of the proceedings of which contains fourteen acts, only one of which is printed in the authorised edition, viz. the act by which the addition of the residence, trade, mystery, or profession, of jurors, was directed to be inserted on the panels.

This parliament also drew up a representation of the state of the country, which they transmitted to the king, under the great seal, a copy of which is enrolled on the close roll of Ireland of this year, with an introductory letter, as follows:—

" Soveraigne liege lorde, these bien the articles and poyntementes, the whiche we, your humble lieges, ye lordes spiritual and temporels, and comunes of your land of Ireland, at your parliament last holden at your citie of Dyvelin, assembled and fore John Sutton, knyght, your lieutenant yn the sayd land, the Fryday next after the fest of

al-halwen, that last was, have send in message to your royall majeste, by our mesagers Henri Ffortescu, chief justice of your chief place in Ireland, and Thomas Strange, knyght, throgh our comune assent, chosen this ynstruccion of the articles you to delyver, writen in the forme that foloweth:

"Fferst, that there your sayd land the last yere for lakke of goode gov^rnaunce, stood in poynt of lesing by brennyng, robbyng, takyng, and kyllyng of your liege poeple here by your Irysh enemyes in every partie, of the whiche myschiefs, aft^r that ye and your wirshipfull and wyse counsell ther had notice of, graciously remedied us in sendyng ov^r un to us be your sayd lieuten^ant sithe his comyng sayd enemyes, and in comfort of us, of the which we thanke you with al our hool hartes; the whiche your said lieutenant, sethe his comyng, over manly and diligently hath werryd and rebukyd your said enemyes, bren and destroied thar cornes, broken and drawed ov^r thire castelles, thire wodds and paas kut; grete slaghtes had a pon tham, thire howses brent, and tham gretely empoverysshid in divers parties, so that thanket be God, we, youre liege poeple here standith in gode rest from the malice of yo^r enemyes, oure persones, corn, houses, and godes, welly savyd from brennyng, robbyng, other takyng; of whos grete labour and costes, we beseche you that he be thanket, as he hath ryght well deservyd, causyng hym to have the moor corage to continue forth his said good and diligent labour.

"Itm—besechith your said lieges, that your sayd lieuten^ant may have good and hasty payment of that that

he should have of you, our soveraigne lord, for the kepyng of your sayd land, so that he may have where with to continue his said labour, and to paie the people, and that he be wel seen unto, consyderyng that he hath had grete costes in holdyng of horsmen and fotemen, of the gise of this land, over the nombre of his soudiours.

" Itm—that ther afore this tyme this land hath stonde in greet meschief and lyklynesse of lesing, by ofte chaungyng and mysgoverʳnauncez of your lieutenᵃntz and her deputees here. We beseche you that, while we stonden wel, such chaunge be not had to us hereafter, for fere of in peril of losing of this land, as hit had been ynne late, wher of God defende.

" Itm—for as myche that divʳs men of this land, of malice and il will, have maad unto you our sovʳaygne lord, and to your wise counsell there, divʳse feyned suggestyons of your lieutenᵃnts, justices, and otheres estates of your sayd land, whiche suggestions have nether come to you, nethir to your said counscill, by auctorite of your parlements, ne counscils here, ne under autentikes seales, or seales of the estates of this land, when parlements or counscilles have not be, for the grete myschiefe that this land hath stouden ynne, but by bylles and naked language. We beseche you that such simple suggeston hereafter be not levyd, but that such suggestion makers finde sufficiant suerte to stand by thire suggestions, and thenne thire said suggestions be send hither to your counseill here, they duly mō to be examyned in the next parlement, or greit counseill here, and, aftʳ that examynacion, ye and your said counseill ther of the trouthe, under your grete seall

here, to be c'tified, and there opon to procede as reson requeryth; consideryng that light levyng of such bylles and suggestions often tymes have causyd greet hyndryng and hevynesse to your said land here.

"Itm—that there div'rs clerkes, merchantz, and othere honeste persones out of your land here, hav travailled yn your land of England, there from Chester to Coventre, Oxenford, and London, now late ben robbed of thire hors and goodes, and thire bodies taken and put in warde, and some beten; we beseche you, that such mysgov'rnaunce be restreined and chastised. Sithe that we ever have and shall be your trewe liege men, and myche sorrow suffre from day to day, here of yo'r enemyes for yo'r sake, thogh we have none there.

"Itm—we beseche you, that ye best consider the true and notable s'rvice that James, your erle of Ormond, hath done unto yo'r g'ndsire, fadyr, and un to you at al tymes hereafor, and namely, when this land hath stoude at most myschief and at poynt of lesyng, and that ye luste have hyme recomended and thankyd for the relevyng and savyng ther of and of us, causyng hym to continue his said true and diligent labo'r forth hereafter; and that he may be paied of that that is owing him for the kepyng of this yo'r said land, while he had gov'rnaunce ther of, as wel in yo'r fader tyme as youres, of that is owyng hym, that he may paie the peple, consideryng that he hath had here afor, and now sithe yo'r said lieuten'nt came over the see, grete costes and charges a boute your s'vice and his, yn resistyng of your enemyes, and that ye best consider also how that his last absence and long tarying out of this

land, causid your enemys to be the bolder to go to werre, and your liege peple myche abasshed and foblied ther by.

" Itm—that yo^{r} lieuten^{a}nt, or depute, for the tyme beyng, may geve benefyces, consideryng that, whenne thay ben long voide, Irish men occupieth tham for lakke of Engleish men, havyng poer for y^{r} lawes of this land, beyn at al tymes used, that wod benefice be give to on Irisshe man, that benefice y^{s} voide and stant in yo^{r} geft for that tyme; and, for as moche, that no man in this land hath power to give benefices y^{t} longith to your geft; and also ye benefices her beyn of litill value, yat no man sueth to yo^{r} lordship to have hem. The which men occupieth them forthe as shold Inglishmen, ye which is a great hinderyng to yo^{r} said land.

" Itm—that ye wolde graciously consider and punysshe the despite that was done to yo^{r} messagers Henry Fortescu, your chief justice, and Sir James Alleyn, knynght, send from us, yo^{r} liege peple of this land, to your royall magest to c^{r}tifi you of the estate and compleyntes of your said land, the which sholde be goyng and comyng, and werev^{r} at that tyme undyr yo^{r} g^{a}cious proteccion, for yo^{r} liege peple here, supposyn that the diservis that is doyn to thaym, goyng in to your reame of England, is doyn by boldenes that hit was not punysshed.

" Itm—that ye wolde graciously ordeyne, that all the lieuten^{a}ntz, and thar deputes, of your faders and yours, make payement to yo^{r} liege people her for thaym and soudio^{r}s. Consideryng, gracious lord, that the defaut her of have be a grete hunderyng and empov^{r}isshing to yo^{r}

said lieges, and if it be remedyet wel be a grete relevyng of thaym.

"Itm—forasmoche as your lawes of this land, in ev^{r}y of yo^{r} co^{r}tes, at all tymes have beyn used, bothe in pledyng and judgements givyng, after your lawes used in Englond, and the lerned men here yo^{r} saide lawes lernet in Innes of Co^{r}t, in youre realme of Englond, in to nowe late that ther beyn refused to be had in Innes of Courte, contrarie to that, that hath be used afor this tyme; we byseche you that ordeyn^{a}ncez be made there, that yo^{r} liege people of this land, that comyth thedir for their said lernynge, may be resceyvet into Innes of Co^{r}t, as they have be^{n} of holde tyms, so that yo^{r} lawes in this land may be contynuet forth, considerynge yat ellys whan these y^{t} nowe beyn here lernet beyn dede, there shal be none in this land that shall canne yo^{r} lawes, lasse than it be lernet there, the which will be a greet disprofite for you, and grete hynderyng for us your poure lieges.

"Also, that the g^{a}cious answers that were given by thavyse of yo^{r} said consaill thereunto, the said Henry Ffortescu, and James Alleyn, knyght, messagers, for yo^{r} said land, might be put in due execucion, accordyng to the same answers, for the grete availe of you, oure soveraigne lord, and in conforte of us your liege people here.

"And at the special request of us, the Right Rev^{r}ent fader in God, Richard, erchebisshop of Dyvelyn, yo^{r} chancellor in yo^{r} said land, your grette seale of yo^{r} said land, to this our instruccion of oure message hath sette unto. Written at yo^{r} said cittee of Dyvelyn, the saide Friday next, aft^{r} al halwen day."

" To our sovraigne and gracious liege lord the kyng of Englond and of Ffrance, and lord of Irlond.

" Sov^r^aigne and gracious lige lord, to yo^r^ heighe and roial majeste, with al man^r^e of humilite and obeisaunce, we us do recomaunde, and of your benyge tendryng of our grevous and hevy compplentz of the mischiefe we yo^r^ humble lieges, the lattist yere, and your land here, stodyn ynne, and of yo^r^ gracious confort, that ye hastily send un to us John Sutton, knyght, yo^r^ lieuten^a^nt, for our heighe relevyng, we thanke you with al our hole hertes, besechyng you of yo^r^ godde and g^a^cious continuaunce, and of al our other matters that we have to acerte your said royal ma-giste. We yo^r^ saide humble liges, at your parlement lattist holden at yo^r^ cite of Dyvelyn, and for your saide lieute-n^a^nt, the friday next, aft^r^ al halwen day, of this yo^r^ said land, has chosen Henry Fortescu, yo^r^ chief justice of your chief place in yo^r^ said land, and Thomas Strangge, knyght, our messag^r^s, by us sent un to you, to approche yo^r^ heighe p^r^sence, our said mat^r^s in an instruccion under yo^r^ grete seale of your said land enseled conteyned, you to declare and delive^r^, besechyng you our said messag^e^r^s^ and message benyngly receyve, and tham feith and gredence geve, and to the articles in our said message conteyned gracious aun-sweres, purvey, and esploite, in al goodly haste, by thavyse of yo^r^ wirshipful and wyse consey'ther, to youre p^o^ fite, and comfort of us yo^r^ true liege men here, and al myghty God gif you god life and victorye of yo^r^ enemyes. Written at yo^r^ said cite of Dyvelyn, the said friday next, aft^r^ al halwen day, and at the special request of us, yo^r^ said lieges the righ reve^r^nt fadyr in God, Richard, archebisshop of Dyvelyn, yo^r^ chauncello^r^ of yo^r^ said land, y^t^ one ptie of your grete seale of yo^r^ said land to this p^r^sent bīe hath set unto. By

yo^r humble lieges y^e lordes spirituell and temp^rell and cōēs of yo^r lond of Irland."*

1430.—A parliament was held this year in Dublin, before Richard, archbishop of Dublin, as appears by the following extract, from the account of Sir James Whyte, seneschal of Ulster, before-mentioned, but there are no rolls of its proceedings:—

"Episcopus Conerensis 100 marcarum, quia summonitus, non venit ad parliamentum domini regis tentum apud Dublin, coram venerabili in Christo patre, Richardo, archiepiscopo Dubliniensis, justiciario domini regis terræ suæ Hiberniæ, die veneris proxima ante festum Sanctæ Trinitatis, anno predicti regis nono.

"Episcopus Dunensis, 100s. pro eodem.

"———— Deriensis, 100s. pro eodem.

"Superior et prepositi de Galwey, £10, quia non retornant breve domini regis ad parliamentum predictum.

"Superior et prepositi de Athenry, £10. pro eodem."

1431.—A parliament was held in the 10th year of Henry VI. a roll of the proceedings of which is in the rolls office, containing seven acts, not one of which is printed in the authorised edition of the statutes.

1435.—In the 14th year of Henry VI. Sir Thomas Stanley being lord lieutenant, the privy council wrote a letter by him, who went over with another representation of the state of the country, to the king from the parliament, which depicts strongly, and in forcible language,

* This letter is placed on the roll *after* the statement of grievances, although intended to *introduce* the messengers to the king.

the melancholy state of affairs: the letter and the representation are both enrolled on the Close Roll of Ireland, and are as follows:—

"*Litera Missa Regi.*

"Most soverayn and gratious lorde, we recomaunde us unto youre hye lordeship, as lowely as we can or may; and, gracious lorde, plese it unto your hye lordeship to wite that youre trewe knight, Thomas Stanley, youre lieutenant here, comes at this tyme unto youre gracious presence, for diverse notable matters that touchen the estate of youre lande here, and to pursue unto youre grace for the paiement that is due unto hym for the kepyng of the same, and to have notice how it plese to youre hye lordeship to make ordennance by the advys of youre worthy counseill, in whate wyse he shall be ordeyned, for from hensforth of his paiement duryng his terme to that ende, that he mow be the better proveided to supporte his charge that ye have commaundyd him with, as of the kepyng of the saide lande. Besechyng yow of youre hye grace to have youre saide trewe knight specially recommendyd unto youre hye lordeship for his good governaunce and manfull labour that he has don and made here, as well amonge youre trewe peple as upon youre enemys, and such pourveiaunce make for his paiement, that he mowe the more hastily repaire hider, in salvacion of youre saide lande from the daunger of youre enemys, and in comfort of youre trewe peple in the same, giffing unto hym gracious and faithfull audience in all such matters as he woll declare thereine, touching the estate of youre lande, to foresaide most soverayn, &c.

"John, ercebisshop of Ardmagh,

"Richard, ercebisshop of Dyvelyn,

"Thomas Strange, knight, deputye to the chancellour, and tresorer,

"Xpofre Bernevale, chief juge of the Kinges Bynche,

"John Blakeney, the chief justice of the Common Place,

"James Cornwalsh, chief baron,

"William Chyvers, secondarie justice of the Kynges Bynche, and all the remnant of youre counsell in Irelande."

"*Thies ben the articles of the message of Irelande.*

"First, that it please oure sov^r^aigne lorde, graciously considerer how that his lande of Ireland is welnegh destrued, and inhabytyd with his enimyes and rebelx, in so moch, that y^r^ is not left in the nethir parties of the countees of Dyvelyn, Mith, Loueth, and Kildare, that yoynyn to gadyr, oute of the subjection of the saide enemyes and rebelx, scarisly xxx miles in lengthe and xx mile in brede ther, as a man may surely ride other go, in the saide countees, to answerre to the kynges writtes and to his commandements.

"Also, the countee of Catherlagh, in the south west partie of the citee of Dyvelyn, within this xxx yere, was oon of the keyes of the saide lande, mydway betweene the saide citee and the out parties, that is to say, the countees of Kilkenny and Tiperarie; and the province of Casshell, also is inhabityd with enemyes and rebelx, save the castels of Catherlagh and Tillagh; and within this lx yere y^r^ were in the saide countee of Cathirlagh, cxlviii castelx and pyles defensible, well voutyd, bataylled, and inhabityd, that now ben destrued and under the subjection of the saide enemyes.

"Also the countees of Kilkenny, Weisford, Waterford,

Cork, Limerick, Tiperarie, and Kery, in the oud^r^ parties of the said lande, ben so destrued and oppressed with enemyes and rebelx, that the fewe leige pepull dwellyn in thamn ben not sufficiaunt to vitaill the citees of Waterford, Cork, and Limeryk, the wich ben sette upon the see coste, neth^r^ the walled towns of the said countees, yat is to say Kilkenny, Rosse, Weysford, Kynsale, Yoghill, Clonmell, Kilmahallok, Thomastown, Carryk, Fithard, Cashell, and many other, wherthrugh the said countees and walled townes ben in the poynt to be enfaymed, and namely, the citee of Waterford, to likelye desolacion of tham in shorte tyme, that God defend.

"Also the most cause of destruction of the saide out^r^ most parties and counties is, because that the xxx yere the lieutenantz of the saide lande, and other governours of the same for the time beying, come nat ther, but it were for a sodan journay or an hostyng; nor have made no residence among the people ther, to pynyshe the rebels by the kynges lawes; and also anor^r^ cause is, that the kyngs courtes, parlementz, and grete conseilles, have not been holden there this xxx yere, save oon parlement x yere ago at the town of Kilkenny, notwithstanding that the leige peple have payed yaire subsides and other grauntz duely, as thay oue to don, to the lieutenantz, and other goveruours of this said lande yat have ben for the tyme.

"Also the province of Ardmagh, that is in the north partie of this saide lande, comprehending v countees, and the province of Twme, in the north weste partie of the same lande, comprehending also v countees, ben enhabyted with enemyes and rebels, and yerely tributaries unto

thaym, and under theyr subjection; saving the castles of Craffergus and Ardglasse, and some of the countee of Loueth, in the province of Ardmagh, and the walled townes of Galvy and Athenry, in the province of Twme; and were not holly visityd by lieutenantz, ne non of governors of the said lande this xl yere, but it were for acteyng, hosteyng, or a sodan journey.

"Also there as diverse writtes passe oute of ye eschequer of the said lande, for to compelle the kynges tenaunts, holdyng of hymn londes and tenements in chief, by knyghtes service, for to do yayre homage in the said eschequer, and that on thayre apparaunce is noman having power to receyve it, but thay ben charged to go into England to the kynges owen persone, to do thayre homage y^r; and inasmuch as the said tenants ben put ever more to so grete distresse and costes, in resistence of the malice of the kynges enemyes and rebels, that thay mowe not so do withoute destruction of thayre londes, by the said enimyes and rebels, in thayre absence; and there fore be putte to grete fynes yerely at the saide eschequer, for y^r respite of thayre said homages. That oure sowaigne lorde wolde, of his grace, graunte a sufficeaunt powere to the lieutenant, or gov^{r}nour of the said lande for the time beying, for to take and recayve ever more homage of his saide tenants, withoute more travayle or costes, by ye consideration aforesaid, and that withouten any fee paying.

"Also as the kynges enimys, that is to say Scottes Bretons, Spanyalx, and others many, with thayre shippes, barges, balyngers, and of vessels diverse, stuffyd with men of warre to grete nowmbre, and that as well in tyme of

pese as of warre, come yerely upon the see by y^e^ costes of the saide lande, and also by the costes of Wales, Chestre, Lancastre, and take merchauntz and other leige peple div^r^se of Irelande, Wales, and Englonde, that cometh and goth betwene with thayre shippes, merchandises and other godes, to passynge nowmbyr, withoute thayre rawnsome; in grete hyndryng and likely undoyng of the saide lande, and of the countrayes foresaide; upon les that yere be remedie ordeyned there upon zerely, y^t^ it plese oure said sov^r^aigne lorde to ordeyne by the avise of his wise counseile y^t^ y^e^ admirall of Englande, and his deputees, have specially in commandement to visite yerely, and namely in the somyr seson, the se by y^e^ costes of the saide lande, and of the parties aforesaide, in withstandyng of the malice of the said ennimyes, and salvacion of his trewe peple, ant that at ye saide lande, evermore, be covered both by see and by lande, under the same pees, and trewes by especiale worde, like as the roialme of Englande is.

"Also that it please our saide sov^r^aigne lorde graciously and tendirly to consider the mischiefs and maters aforesaide, y^e^ wich ben emynent to cause hasty destrucion of the saide lande; and that it plese hym, of his hie grace, to graunt licence to his peple here, that thay, withoute displesance of hym, mow desire his presence at this tyme into his saide lande, the which wold be principall remedie of all the myschiefs and maters abovesaide, and sov^r^aigne comforte of his peple, and fynale rebuke of thayre enimyes, that God graunte ham that to se in haste. And, in case that it be not plesying to his hie lordship to come hidyr as yet, and also, forasmoch, as it hath ben ofte tymes compleyned unto hym and his worthie counseill, of div^r^se,

extorsions and non paiements, don to the leige peple here, by lieutenants and other gov^r^nours of the same lande efor this, by the wich the same lande is gretely fallen in declyne, that it plese oure said sov^r^aigne lorde of his grace hereapon, to ordeyne some gracious and hastie remedie; and also to comawnde the lieutenant, that now is, to repaire in haste, with sufficeance of gode and men, and that he se that the said lande be duely keppyd and gov^r^nyd during his terme; other else some other grete lorde of the kynge's blode, and such as the peple woll drede and be aferd of, with sufficeaunce also of gode and men, in such wise that he that shall come now be ev^r^more powerouse to pay the peple, holde his retenue, and do due execution of lawe, and punishe rebellion and other trespass at all times like as the case askes; and that he have specially in cowmaundement justely and duely to observe this; and that the saide lieutenante, or any other gov^r^nor comyng, fynde sufficeant surete to oure saide sov^r^aigne lorde to kepe his retenue here continuely during his terme, and also to performe the articles forsaide, and to be here before the begynyng of this somyr, or else the saide lande is like to be fynaly destrued."

1439–40.—In the 18th year of Henry VI. a parliament was held in Dublin, before Richard, archbishop of Dublin, the lord justiciary. The roll of proceedings of which, is in the rolls office, and contains eleven statutes, four of which are printed in the authorised edition.

1446–7.—John Talbot, earl of Shrewsbury, was appointed lord lieutenant of Ireland, and held a parliament at Trim, on Friday after the feast of the Epiphany in this year, 25 Henry VI. a roll of the proceedings whereof, is

in the rolls office, containing thirty-four statutes, ten of which are printed.

1448.—Richard Plantagenet, duke of York, father of king Edward the Fourth, was made lord lieutenant for ten years, and held a parliament at Drogheda, on Friday before the feast of St. Luke, 28 Henry VI. The roll of the proceedings whereof is also extant, and contains thirty-nine acts, four only of which are printed. Chapter seven enacts, that no *lord of parliament* shall be a sheriff, and if elected, he shall be discharged. Another parliament was held at Drogheda in this year, on Friday before the feast of St. Mark the evangelist.

1449.—The roll containing the proceedings of the parliament of this year is extant, and contains thirty-nine statutes, seven of which are printed. Chapter four is an act resuming all grants of lands and offices made in Ireland from a given period, and chapter 21, is an act for the incorporation of a town, called Mulso's-court, in Fercolyn.

1450.—A parliament was held in this year, of which the roll is in the rolls office, and contains twenty acts, not one of which is printed.

1453.—A parliament was held in this year, before Sir Edward Fitz-Eustace, knt. deputy to Richard, duke of York, earl of Ulster, and lord of Meath, lord lieutenant, of which three statutes are printed in the authorised edition, but the roll of its proceedings is not in the rolls office.

1454.—Thomas Fitzmaurice, earl of Kildare, deputy

to Richard, duke of York, lord lieutenant, held a *great council* at Dublin, on Friday before the feast of St. George, this year, the roll of the proceedings of which contains twenty-three statutes, four of which are printed in the authorised editions of the statutes, and have been considered lawful statutes, although made in a great council.

1455.—A parliament was held this year in Dublin, before the earl of Kildare, on Friday before the feast of St. Luke the evangelist, the roll of its proceedings contains thirty-eight acts, none of which are printed in the authorised edition.

1456.—A parliament was held at Naas, before the earl of Kildare, on Friday after the feast of All Saints this year, the roll of the proceedings of which contains thirty-one acts, three of which have been printed.

1457.—The earl of Kildare, held a parliament in Dublin this year, on Friday after the feast of the Purification, the roll of the proceedings of which, contains thirty-five acts, only two of which have been printed, and the following year the earl held another parliament in Dublin, on Friday after the feast of St. Blaise the martyr, (3 Feb.) the roll whereof contains twenty-six acts, only one of which is printed.

1459.—The duke of York, the lord lieutenant, held a parliament at Drogheda, on Friday after the feast of St. Blaise, and four sessions during the year. The roll of the proceedings whereof, contains sixty-three acts, of which only one is printed.

A dispute arose at the great council of the 29th of Henry VI. between Robert Preston, lord of Gormanstown, and David Fleming, lord of Slane, *for precedence*, which continued to this period, when the lord of Gormanstown presented a petition to parliament, setting forth the circumstances of his case, recited in chapter 30 of the acts of this parliament, which was enacted to settle the point in dispute. The following is a translation of that statute :—

"Item—At the supplication of Robert Preston, chivaler, lord of Gormanstown. That whereas he and his ancestors in the time of Richard, late king of England, had been lords of Gormanstown, and *barons of the parliament of the said land*, and had their places in the parliaments and great councils held in the same, with the precedence appertaining to the same, above any baron of Slane, until the time of the great council, held at Dublin on Friday, next before the feast of St. Andrew, the apostle, in the 29th year of the reign of king Henry VI. before James Botiller, late earl of Ormond, deputy to the high and puissant prince Richard, duke of York, then lieutenant of the land of Ireland ; and the said earl, meaning unkindly the dishonour and rebuke of the said lord Robert, commanded him, with haughtiness and without lawful deliberation, under great pains and penalties, and under perilous and evil threats, to take his place and seat in the said council, *below Christopher, then baron of Slane*, without any examination or investigation of the demand and title which the said lord Robert claimed to pre-eminence by his own supplication and request, but refused to proceed in the inquiry and judgment, to the great injury and prejudice of his, the said lord Robert's title, and against law

and right. And that the said earl at that time refused to pay any regard or attention to any other thing but the unbounded execution of his said malice, and repeatedly commanded the said Robert to obey his said orders, and to sit in that place, in that terrible manner and form, which caused him, from fear and compulsion alone, to obey, he, however, then made protestation that he was unwilling to take his seat in that place, in derogation of the title which he had of right to sit above the said baron, in the said parliaments and councils. He does not deny that he so sat, but says it was solely from fear of the said earl, and to avoid the jeopardies and inconveniences of the execution of his said threats. And he now prays, that notwithstanding that he so took his seat at that time, and for that cause, it may not be taken as an example or precedent, to the injury or prejudice of himself or his heirs hereafter, as if it had been so enacted in the said council. Upon consideration of the premises, it is enacted and ordained in the said parliament, and by the authority of the same, that the said lord Robert *shall have his place in all parliaments and great councils, to be hereafter held* in the said land, *as his father and grandfather* had heretofore. And that the sitting of the said lord Robert, in the said council, by the said compulsive commandment of the said earl's ill will, against equity and justice, shall not be taken for a precedent, or matter of record, against him or his heirs hereafter."

This act, however, did not conclude the controversy, for David, lord Slane, absented himself from parliament, and refused to take his seat, or to submit to the provision of the act before recited. A parliament was held in the

first year of king Edward the Fourth, but the roll of its proceedings is so much mutilated, that it is not legible, therefore, the nature of its proceedings is unknown.

In 1462, Roland Fitz-Eustace, lord of Portlester, deputy to George, duke of Clarence, then lord lieutenant of Ireland, held a parliament at Dublin, on Friday after the feast of St. Luke the evangelist, the roll of which is extant, though not perfect, containing eighteen acts, only one of which has been printed. In this parliament the earl of Ormond was attainted, and Sir Robert Preston, lord of Gormanstown, again brought his case forward, when witnesses, viz. "*divers persons of honour in that land,* whose names are affixed to the bill, which was brought into parliament," were examined as to the fact of his precedence above lord Slane, and on their testimony it was enacted, that the said lord of Gormanstown, and *his heirs, as lord of Kells in Ossory,* should have precedence of the lord of Slane *and his heirs,* in all future parliaments and great councils.

The following is a translation of the act, so passed to settle this question of precedence; it is a singular and unique document, showing the anxiety and care with which the peers of Ireland contended for, and preserved their privileges in ancient times:—

"Item—At the supplication of Robert Preston, chivaler, lord of Gormanstown, whereas, in a parliament held lately at Drogheda, and afterwards adjourned to Dublin, and there finished, before the most high and puissant prince

Richard, duke of York, then being lieutenant of Ireland, on Friday next after the feast of St. Blaise, the bishop, in the 38th year of the reign of Henry the Sixth, late king of England, at the supplication of the said lord Robert, it was ordained, by the authority of the said parliament, that he and his heirs should have and enjoy such place and sitting in parliaments and great councils, as his father and grandfather had and enjoyed. And because it is well known to divers persons of honour in this land, whose names are contained in a schedule, annexed to the bill brought into the said parliament, and hereinafter written, that Christopher Preston, chivaler, father of the said lord Robert, sat in parliaments and great councils above lord Christopher Fleming, baron of Slane, and that lord Robert Preston, great grandfather of the said Robert, sat above lord Simon Fleming, at that time baron of Slane, and that lord David Fleming, chivaler, now baron of Slane, had absented himself from parliaments and great councils, with the intent that the aforesaid persons who could come and prove the seat of their ancestors, should die before the matter aforesaid was duly examined, according to the tenor of the aforesaid act. Upon consideration of the premises, the *persons aforesaid having been examined, and the allegations of the bill being found by their examination to be true*, it is ordained, established, and adjudged, by the authority of the said parliament, that the said lord Robert and his heirs, *as lord of Kells in Ossory*, should have their places in parliament and grand councils and sit above David Fleming, now baron of Slane and his heirs, and all other barons of Slane, who shall be hereafter."

SCHEDULE OF WITNESSES.

" Sir Thomas Bathe, chivaler, lord of Louth,
" Thomas Plunket, chivaler,
" Christopher Plunket, chivaler,
" Robert Dovedale, chivaler,
" Nicholas Strangways, esquire,
" John Capron,
" Nicholas Heredeman, esquire and many others."

This *lordship of Kells in Ossory* was a title in fee, acquired by Robert Preston, the great grandfather, mentioned in the foregoing act of parliament, by marriage with Margaret, daughter of Walter Birmingham, *lord of Kells in Ossory*, and sister and heiress of his son Walter Birmingham, lord of Kells, who died without issue, who was mother of Christopher Preston, lord of Kells, and grandmother of Christopher Preston, lord of Kells, father of Robert, the petitioner, who, in her right, became *lord of Kells in Ossory*.

This title could not have reference to the tenure of the manor of Kells, which having escheated to the crown by forfeiture, had been granted to the said Walter de Bermingham *for life*, and after his death to James, earl of Ormond, for life also, nor was it in the possession of the Prestons, at the passing of the act of Edward IV. therefore, it must have been a mere personal dignity, originating in the summons and sitting in parliament of Walter de Birmingham, by that title, in the reign of Edward the Third.

The escheator's account on the great roll of the Pipe of

Ireland, of the 35th year of king Edward the Third, proves the marriage of Robert Preston, with Margaret, sister and heir of Walter de Birmingham, and a patent of the 25th of Edward the Third, proves the grant of the manor of Kells to Walter de Birmingham, knt. for life, and after his death, to James earl of Ormond.

The annexed pedigree shews the descent of the peerage of Kells, from the Birminghams to the Prestons. It may also be observed, that Sir Robert Preston, knt. lord chief justice of the court of Common Pleas, was the first lord of Gormanstown, having purchased the manor of Gormanstown from Sir Almaric de St. Amand, in the year 1363. He was an Englishman, and the first of his family who settled in Ireland, was often summoned to parliaments and great councils, as a privy councillor, and afterwards, after his marriage, as a peer.

This evidence clearly negatives the alleged antiquity of the palatine barony of Slane, *as a peerage*, and shows that Baldwin le Fleming, who was summoned to parliament 3 Edward II. never took his seat, and that Simon le Fleming was really *the first lord of parliament of the family* of Fleming, or he would not have been *puisne* to Walter de Birmingham, lord of Kells.

James de Birmingham=

Peter de Birmingham, lord of Thetmoy or Monasteroris, in Kildare. = Ela de Odingsells.

John de Birmingham, eldest son and heir, created earl of Louth by Edward II. left three daughters his coheirs.

William de Birmingham, third son, attainted and executed. =

Walter de Birmingham, restored, had a grant of the manor of Kells in Ossory for life; summoned to parliament *as lord of Kells*, lord lieutenant of Ireland. Died 29th July, 1350. = Elizabeth Multon, daughter and coheir of John, lord Egremont, relict of Robert de Haverington.

Walter de Birmingham, lord of Kells, only son and heir; died without issue.

Sir Robert de Preston, lord of Gormanstown in Meath, lord chief justice of the common pleas. = Margaret, only daughter, heir to her brother.

Christopher Preston, lord of Gormanstown in right of his father, and of Kells *jure matris*. Sat in Parliament. =

Christopher Preston, lord of Kells and Gormanstown=

Robert Preston, lord of Kells and Gormanstown, 2 Edw. IV.

The peerage of *Gormanstown* was *puisne*, but that of *Kells* was senior, to *Slane*, and, therefore, the parliament decreed the precedence to Preston, as lord of Kells, which he inherited as heir general to his mother, both, consequently, were titles in fee descendible to heirs general.

David, lord Slane, was himself a peer by a recent summons, not being heir general of his great grandfather, who

was the first that sat in parliament, for his half brother John, left a son, who died without issue, and two daughters, who became coheirs of their brothers, between whom the original title went into abeyance. But David, lord Slane, being related to the duke of York, and to king Edward IV. through the Genevills, had the old precedence allowed him.

1463.—A parliament was summoned to meet at Wexford, on Friday after the feast of St. Martin, the bishop, 3 Edward IV. 1463, before Thomas, earl of Desmond, deputy to George, duke of Clarence, lord lieutenant, where it met, and adjourned to Waterford, and met there on the Thursday following, and continued till the Monday after, when it adjourned to Saturday, the feast of St. Edmund the king, at Naas, and afterwards to Dublin, on Monday after the feast of St. David the bishop, where its sittings ended the Saturday following. The roll of the proceedings of this parliament is extant, and contains one hundred and nine statutes. Chapter four, is an enactment of the privilege of parliament, "That every member, as well lords, proxies, and commons, be discharged, and quit of all manner of actions, had, or moved against them, or any of them, during forty days before and forty days after every parliameut, and this to endure for ever." There are but three of the acts printed in the authorised edition of the statutes. The greater proportion of the unprinted acts are private, conferring livery or rectifying mistakes, or informalities in suing out livery, granting wardships, or other matters concerning estates.

1465.—Thomas, earl of Desmond, lord deputy, held a

parliament at Trim, on Wednesday after the feast of St. Lawrence in this year. The roll of the enactments is in the rolls office, and contains seventy-seven statutes, enacted in three sessions, of which but six are printed.

1467.—John, earl of Worcester, lord deputy to George, duke of Clarence, held a parliament at Dublin, which was divers times prorogued; the roll of its proceedings is in the rolls office, and contains eighty-four statutes of six sessions, four of which are printed in the authorised edition. Among the unprinted public acts is an act of resumption of the grants of land made during the reign of Henry the Sixth; and another authorising the lord lieutenant to appoint a seneschal to the palatine liberty of Meath, which had merged in the crown by inheritance. The others are private acts correcting errors in livery, &c.

1467.—A parliament was held at Drogheda, on Monday after the feast of St. Michael, its enactments are enrolled on the preceding roll, only two of its statutes are printed. Among the unprinted statutes is one enacting, that the palatine liberty of Meath should continue, notwithstanding it had merged in the crown.

1469.—A parliament was held in this year; the roll of its proceedings is extant, but none of the statutes thereon have been printed.

1471.—Thomas, earl of Kildare, deputy to George, duke of Clarence, lord lieutenant, held a parliament which met at Naas, on Friday after the feast of St. Andrew, and was afterwards prorogued to Dublin. The roll of its sta-

tutes are extant, and contains ninety-one enactments, three of which are printed.

1474.—A roll of the statutes of a parliament held in this year, is in the rolls office, and contains twenty-four acts, none of which have been printed.

1475.—William, bishop of Meath, deputy to George, duke of Clarence, lord lieutenant of Ireland, held a parliament at Dublin, on Friday after the feast of St. Margaret, the virgin, a roll of the statutes whereof is in the rolls office, and contain ninety-two acts, of which but one is printed.

1477.—A roll of the statutes enacted in the parliament of this year is extant, containing fifty-five acts, of which none have been printed.

Gerald, earl of Kildare, lord justiciary of Ireland, held a parliament at Naas, on Friday before the feast of St. Petronilla, the virgin, which was prorogued and adjourned various times. Three rolls of the statutes whereof are extant, containing forty-seven enactments, two of which only are printed. Chapter five, is an act repealing and annulling certain statutes of former parliaments, the precise terms of which were not known, which ordained, "That no manner of man should be admitted as proxy into any parliament for any clergy, if he were not beneficed within the diocess, nor knight for a county, if he were not dwelling within the said county, and might dispend forty shillings within the said county yearly, or citizen for a city, nor burgess for a town, unless he were

dwelling in the said city or borough." This statute enacts that the statutes hereafter made in parliament shall be good and valid, although the proxies, or representatives, be not so qualified.

1479.—There is in the rolls office a roll of sixteen statutes, enacted in the 19th of Edward IV.

1480.—Gerald, earl of Kildare, deputy to Richard, duke of York, lord lieutenant, held a parliament at Dublin, on Monday, next after the feast of the translation of St. Thomas the martyr, the roll of the proceeding of which contains sixty statutes, only one of which, laying a duty on hawks exported, is printed.

There is a roll endorsed as of the 21st of Edward IV. in the rolls office, but it is a matter of doubt, if it be of that year; it contains an act of resumption.

The following letter from king Richard the Third, settles the period of the commencement of his reign, it is enrolled on the memorandum roll of the exchequer of Ireland:—

"Richard, by the grace of God, king of England and of Ffrance, and lord of Ireland, to all oure subgietts and liegemen within oure land of Ireland, hering or seing these oure letters, greting. Fforasmuch as we are enfourmed that there is grete doubte and ambiguyte amoung you for the certaine day of the comensing of our ragne. We signifie unto you for the trouthe that, by the grace and sufferaunce of oure blessed criatour, we entred into oure just title, taking upon us oure dignitie royall and suppreme

governaunce of this oure royms of England, the XXVI day of Juyn, the yere of our Lord M,CCCC,LXXXIII. and after that we woll that ye doo make all writing and records among you. Yeven, under signet, at our castell of Notingham, the xiith day of Octobre, the second yere of our reigne."

There are none of the statutes of Richard the Third printed, but there are two rolls of statutes of the parliaments of his first and second years in the Rolls Office, that of the first year containing twenty-seven acts, that of the second seventeen. In the second year the act passed, in which the statute of Henry Fitz Empress is recited.*

Earls of Kildare, were lord deputies during this and the preceding reign, and exercised the royal power according to their will, summoning parliaments which enacted laws of a very singular and extraordinary character; among others an act was passed that the corporation and men of the town of Ross, *might reprize themselves against robbers*, in other words, might rob the innocent to indemnify themselves for having been previously plundered. Similar acts were passed for the citizens of Dublin, who were thereby authorized to reprize themselves by seizing the persons and goods *of all English subjects whatever*, except certain individuals mentioned in the act, and English merchants then in Dublin were allowed a certain time to remove themselves and their property from Ireland.

* See page 299.

As these acts are curiosities, and so clearly demonstrated the necessity for the enactment of Poyning's statute, which, without such an explanation, is scarcely to be credited, translations are annexed.

Among the statutes passed in the parliament, held at Naas, on Friday, after the feast of St. Andrew the apostle, before Thomas Fitzmaurice, earl of Kildare, lord deputy to George, duke of Clarence, &c. &c. in the 12th year of king Edward the Second, A. D. 1473, is the following, cap. 47:

"Prayen the Commons—Whereas, the merchants of the city of Dublin, as well as those of Drogheda, have for time beyond memory gone to the noble realm of England, to practice their merchandize, remaining there buying and selling, and were reputed and considered Englishmen, and faithful liegemen of the king, and had liberty to go and return at their will. But that lately certain merchants of the same, who were waiting at Chester, and other places in England, with their wares and merchandize, were arrested and taken and remain in custody, without reasonable cause, to their great costs and loss unless they be graciously redressed. *Whereupon the premises tenderly considered, it is enacted, ordained, and established by authority of parliament, that it shall be lawful for the friends of every person going into England, and returning out of the same, who is arrested or taken, or shall hereafter be arrested or kept at Chester aforesaid, or at any other place in England, for any fault or misdeed committed in fact, or surmised to be committed, by any other person of this land, of whatsoever estate and*

condition he be, to take any merchant or person of the said realm, that to them shall seem best, being within the said city or town, or in any other place within the said land, and them to retain until the merchant or person of the said city, town, or place, or any of them so arrested, kept, or taken, be absolutely delivered to their liberty and will. *Provided that the merchants of England who are now in this land, shall have time of respite to withdraw themselves and their goods, that is to say, between this and the feast of the apostles, Philp and James, next ensuing.*"

The following act is not to be found on the Rolls of Parliament, but an exemplification under the Great Seal of Ireland, and teste of Gerald, earl of Kildare, deputy to Jasper, earl of Pembroke, lord lieutenant, is entered in the "*Domesday Book of Dyvelyn Cytye.*" A record in the possession of the Corporation of Dublin, dated 5th June, 2 Hen. VII. in these words:

"Henry the Seventh, &c. king of England and lord of Ireland, &c. to all, &c. greeting. We have inspected a certain act of our parliament, held at Dublin on Friday next, after the feast of St. Katharine the virgin, last past, before Gerald, earl of Kildare, deputy to our dearly beloved uncle, Jasper, earl of Pembroke, our lieutenant of our land of Ireland, which act being in the French language, we have caused to be translated (into Latin).

"Item.—At the humble supplication of the mayor and all the king's inhabitants of Dublin, whereas the said mayor, citizens and inhabitants, carry on great merchandize and trade in the kingdom of England, and beyond

the said kingdom, from the land of Ireland, to the great benefit and advantage of the same, and so it is that the said mayor, citizens and inhabitants, have been often robbed and despoiled of their goods against all law and conscience, as well lately *John Odeinport*, *Robert de Irland*, *Thomas de Ebes*, and *William de Hiborn* of Liverpool, in the county of Lancaster, went with force and arms to Wirrall, in the said kingdom, and there robbed and spoiled *Robert Lawless* of Dublin, merchant, of his goods to the value of one hundred marks, and Reginald Talbot, of goods to the value of forty pounds. And also the people of Yorkshire, took from *Richard Bruyn*, *John Clerk*, and the *Baron of Skryne*, goods to the value of forty pounds. Also *Leo Hoknall, of Wirrall*, in the county of Chester, with divers others of the said counties of Lancaster and Cheshire, robbed and despoiled *William Brown*, *Patrick Mele*, *John Pelet*, *Robert Forster*, and divers others of the citizens and inhabitants of the said city of their goods and merchandize to the value of twenty pounds, and threatened to kill them, calling them *false herlottes* and *Ireshe knaves*, to their great injury and damage, and extreme annihilation and debilitation of the said mayor, and divers of the said citizens and inhabitants, and all others in future, unless that immediate, direct, and due remedy be quickly had in this behalf. Upon consideration of the premises, and also that the said Robert Lawless took proceedings to prosecute, according to due form of law, the said malefactors, and could obtain no remedy, upon which he laboured for a remedy from the king's good and royal favour, praying that he would command that the nobles on the coasts should distrain the robbers, and make full restitution to the said

Robert of his goods as before recited, to which they were disobedient, and restored nothing to the said Robert.

" Therefore be it enacted, and established by the authority of the said parliament, that from the feast of St. John the baptist next ensuing, *it shall be lawful to the said mayor, citizens and inhabitants, and every of them, to attach, and arrest any person or persons of the said kingdom of England, and all places in obedience to the royal authority thereof, as well for the future as the past, for any offences committed, or hereafter to be committed, and likewise to arrest their bodies and goods wherever they be able to find them, as well within franchises as without, and them to keep under the said arrest until the said mayor, citizens and inhabitants, and every of them have and receive full restitution of their goods, and compensation for their losses.* And if any person or persons, whatsoever be their state or condition, shall help, support, maintain, or colour, any person or goods of the said kingdom, by which the said mayor, citizens, or inhabitants of any of them shall, or may be injured against the meaning of this act or ordinance, so that they cannot, or shall not be able to draw benefit from the same, they shall forfeit two hundred pounds, one-half to the king and the other to the said mayor, citizens, and inhabitants, who shall be so injured and aggrieved, because that no protection or safeguard shall be held valid to any person against this act or ordinance. Provided always nevertheless, that this act or ordinance shall not extend, or be prejudicial, to *John Vale of Coventre, merchant, John Gale of Wakefield, merchant, Thomas Hoggeson of the same, merchant, John Flacher of*

Manchester, merchant, nor to Richard Beswick, junior, of the same, nor to their factors, attornies, goods, chattles, or warehouses, &c. or any of them for any offence before this time committed."

We have, therefore, at the request of the said mayor, &c. exemplified this act or ordinance under our Great Seal, &c. Witness our aforesaid deputy at Dublin. 5th Jan. in the second year of our reign.

These, and other acts of a similar nature and tendency, which went effectually to destroy the royal authority in Ireland, led to the sending over Sir Edward Poynings as lord-deputy, by Henry the Seventh, and the passing of the act afterwards known by the name of *Poyning's law,* by which the parliament and government of Ireland were deprived of the power of originating any act, or bringing in any bill into either house of parliament, until the measure had received the assent of the king in council in England, which continued to be the law of Ireland until the year 1783.

The before-mentioned statutes which made it lawful for one part of the king's subjects to levy war against another part were also repealed, and the earl of Kildare was shortly after attainted and executed for high treason.

The statutes passed during the reigns of Henry the Sixth, Edward the Fourth and Richard the Third, contain a very complete history of the transactions of the English government in Ireland for that period; even

the courts of law; required the assistance of parliament to enforce their decrees and, to compel the great proprietors to attend their summons, or the king's writs, acts were passed calling, by proclamation, for the attendance of individuals on pain of attainder or outlawry.

In some parts of the country the law of England was altogether superseded, and the civil code substituted in its stead, and that law was administered by the mayor of Galway, *in the name of God*, so completely had the English power been enfeebled or set aside.

In the 17th year of king Edward the Fourth, A. D. 1478, Jermyn Lynch, Goldsmith, complained to parliament that he had been sued by Walter White of Limerick, merchant, and Garrett Lewes, "before the sovereign and portrieves of Galway, by *the civil law*, and that on judgment they got possession of his premises in the town of Galway," whereupon, as there is no sheriff in the counties of Limerick or Connaught, nor any lettered man by which the law could be duly executed, William, son of Saunders Lynch, sovereign of Galway, John French, John Fitzwilliam Blake, and Thomas Blake of Galway, merchants, who had proceeded according to the *imperial* or *civil law*, and not according to the law of England, were by this statute required to appear in the court of King's Bench, with the records of their proceedings, or forfeit £10. for each offence.

Henry the Seventh, however, introduced a better sys-

tem of administration, but the English power did not fully recover its stability till the reign of James the First. The greater part of the Irish chieftains acknowledged *no* superior but the sword, and no law but their will.

THE END.

BSB Bayerische StaatsBibliothek

MDZ Münchener DigitalisierungsZentrum Digitale Bibliothek

Betham, William

The Origin and History of the Constitution of England, and of the early Parliaments of Ireland

Dublin 1834

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